

# SECURITIES AND EXCHANGE COMMISSION

## FORM SC 13D/A

Schedule filed to report acquisition of beneficial ownership of 5% or more of a class of equity securities [amend]

Filing Date: **2001-04-16**  
SEC Accession No. **0001036050-01-500282**

([HTML Version](#) on [secdatabase.com](#))

### SUBJECT COMPANY

#### **BREAKAWAY SOLUTIONS INC**

CIK: **1076643** | IRS No.: **043285165** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **SC 13D/A** | Act: **34** | File No.: **005-58275** | Film No.: **1603300**  
SIC: **7389** Business services, nec

Mailing Address  
*50 ROWES WHARF  
6TH FLOOR  
BOSTON MA 02110*

Business Address  
*50 ROWES WHARF 6TH FL  
BOSTON MA 02110  
6179603400*

### FILED BY

#### **SCP PRIVATE EQUITY PARTNERS II LP**

CIK: **1118995** | IRS No.: **233037972** | State of Incorporation: **DE** | Fiscal Year End: **1231**  
Type: **SC 13D/A**

Mailing Address  
*BUILDING 300 435 DEVON  
PARK DRIVE  
WAYNE PA 19087*

Business Address  
*435 DEVON PARK DRIVE  
BLDG 300  
WAYNE PA 19087  
6109952900*

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, DC 20549

SCHEDULE 13D

Under the Securities Exchange Act of 1934  
(Amendment No. 1)\*

BREAKAWAY SOLUTIONS, INC.  
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(Name of Issuer)

Common Stock, \$0.000125 Par Value Per Share  
-----

(Title of Class of Securities)

105372 10 5  
-----

(CUSIP Number)

Charles C. Freyer, Esquire  
General Counsel  
SCP Private Equity Partners II, L.P.  
435 Devon Park Drive, Building 300  
Wayne, PA 19087  
610-254-4242  
-----

(Name, Address and Telephone Number of  
Person Authorized to Receive Notices and Communications)

copy to: Spencer W. Franck, Jr.  
Saul Ewing LLP  
Centre Square West  
1500 Market Street, 38th Floor  
Philadelphia, PA 19102-2186  
215-972-1955

April 6, 2001  
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(Date of Event which Requires Filing of this Statement)

If the filing person has previously filed a statement on Schedule 13G to report the acquisition which is the subject of this Schedule 13D, and is filing this schedule because of Rule 13d-1(e), 13d-1(f) or 13d-1(g), check the following box [ ]

NOTE: Schedules filed in paper format shall include a signed original and five copies of the schedule, including all exhibits. See Rule 240.13d-7 for other parties to whom copies are to be sent.

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\* The remainder of this cover page shall be filled out for a reporting person's initial filing on this form with respect to the subject class of securities, and for any subsequent amendment containing information which would alter the disclosures provided in a prior cover page.

The information required in the remainder of this cover page shall not be deemed to be "filed" for the purpose of Section 18 of the Securities Exchange Act of 1934 ("Act") or otherwise subject to the liabilities of that section of the Act but shall be subject to all other provisions of the Act (however, see the Notes).

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

SCP Private Equity Partners II, L.P.  
23-3037972

2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\*

(a)   
(b)

3 SEC USE ONLY

4 SOURCE OF FUNDS\*

WC

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED  
PURSUANT TO ITEMS 2 (d) OR 2 (e)

---

6 CITIZENSHIP OR PLACE OF ORGANIZATION

Delaware

---

7 SOLE VOTING POWER

NUMBER OF  
SHARES

0

---

8 SHARED VOTING POWER

BENEFICIALLY

56,491,660

OWNED BY

---

9 SOLE DISPOSITIVE POWER

EACH

REPORTING

0

PERSON

---

10 SHARED DISPOSITIVE POWER

WITH

56,491,660

---

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

56,491,660

---

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

---

13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

52.5%

---

14 TYPE OF REPORTING PERSON\*

PN

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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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1 NAME OF REPORTING PERSONS  
I.R.S. IDENTIFICATION NOS. OF ABOVE PERSONS (ENTITIES ONLY)

SCP Private Equity II, LLC  
23-3047235

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2 CHECK THE APPROPRIATE BOX IF A MEMBER OF A GROUP\* (a)   
(b)

---

3 SEC USE ONLY

---

4 SOURCE OF FUNDS\*  
AF

---

5 CHECK BOX IF DISCLOSURE OF LEGAL PROCEEDINGS IS REQUIRED PURSUANT TO ITEMS 2(d) OR 2(e)

---

6 CITIZENSHIP OR PLACE OF ORGANIZATION  
Delaware

---

7 SOLE VOTING POWER  
NUMBER OF 0  
SHARES

---

8 SHARED VOTING POWER  
BENEFICIALLY 56,491,660  
OWNED BY

---

9 SOLE DISPOSITIVE POWER  
EACH 0  
REPORTING  
PERSON

---

10 SHARED DISPOSITIVE POWER  
WITH

---

11 AGGREGATE AMOUNT BENEFICIALLY OWNED BY EACH REPORTING PERSON

56,491,660

---

12 CHECK BOX IF THE AGGREGATE AMOUNT IN ROW (11) EXCLUDES CERTAIN SHARES\*

[\_]

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13 PERCENT OF CLASS REPRESENTED BY AMOUNT IN ROW (11)

52.5%

---

14 TYPE OF REPORTING PERSON\*

CO

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\*SEE INSTRUCTIONS BEFORE FILLING OUT!

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This Amendment No. 1 to Schedule 13D amends and supplements the Schedule 13D filed with the Securities and Exchange Commission on February 26, 2001 (the "Schedule 13D"). Information in the Schedule 13D remains in effect except to the extent that it is superceded by the information contained in this Amendment No. 1. Information given in response to each item shall be deemed to be incorporated by reference in all other items. Capitalized terms used but not defined in this Amendment No. 1 shall have the meanings ascribed to such terms in the Schedule 13D.

Item 1. Security and Issuer

This Amendment No. 1 relates to the acquisition of (a) warrants to purchase up to 28,571,429 shares of the Issuer's Common Stock, at an initial exercise price of \$.70 per warrant (the "Warrants") and (b) 214,286 shares of the Issuer's Series A Preferred Stock, \$.0001 par value (the "Series A Preferred"), which is initially convertible into 21,428,600 shares of Common Stock.

The exercise price of the Warrants and the number of shares of Common Stock underlying the Warrants are subject to adjustment upon certain events as described in the Warrants. The form of the Warrant is filed as Exhibit 2 hereto,

and the terms of which are incorporated herein by reference. The Series A Preferred is convertible into Common Stock on the terms set forth in the Certificate of Designation of the Series A Preferred Stock, which is filed as Exhibit 3 hereto, and the terms of which are incorporated herein by reference.

Item 3. Source and Amount of Funds or Other Consideration

The Closing took place on April 6, 2001, and pursuant to the terms of the Purchase Agreement, SCP L.P. acquired (i) 214,286 shares of the Series A Preferred and (ii) the Warrants. At the Closing, SCP L.P. delivered the notes held by it evidencing indebtedness under the Debt Financing (as more fully described in the Schedule 13D) to the Issuer for cancellation, and the outstanding amount of such notes, \$7,766,666.67, was applied to the purchase price of \$15,000,305. SCP L.P. paid an additional \$2,233,333.33 towards the balance of the purchase price, of which \$135,000 was paid to Robert Yablunsky as a finders fee owed by the Issuer to Mr. Yablunsky. The remaining balance of the purchase price will be paid in one or more installments pursuant to the Purchase Agreement.

Item 4. Purpose of Transaction

Pursuant to the terms of a Closing Agreement dated as of April 6, 2001 (the "Closing Agreement"), which is filed as Exhibit 4 hereto and the terms of which are incorporated herein by reference, the Issuer increased the size of its Board of Directors to seven members, and elected the following persons to the Board: Wayne Weisman, E. Talbot Briddell, Jerry Marcus, William Loftus and Henry Nassau.

Except as set forth above, none of the Reporting Persons, the General Partner nor any of the Members, have formulated any plans or proposals of the types referred to in clauses (a) through (j) of Item 4 of Schedule 13D. However, all of SCP L.P.'s investments are made

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with the intention of exiting within a matter of a few years. Accordingly, a future proposal or plan for the sale of the Issuer or of SCP L.P.'s interest in the Issuer by the Reporting Persons is possible. The Reporting Persons reserve the right to change their plans at any time.

Item 5. Interest in the Securities of the Issuer

(a)-(b) Both Reporting Persons may be deemed to be the beneficial owners with shared power to vote and dispose of a total of 56,491,660 shares of Common Stock (or 52.5% of the outstanding Common Stock). SCP LLC is deemed to be such a beneficial owner as described herein because of an agreement with SCP L.P. granting SCP LLC the power to make voting and investment decisions

regarding the securities held by SCP L.P.

(c) Not applicable.

(d) Not applicable.

(e) Not applicable.

Item 6. Contracts, Arrangements, Understandings or Relationships With Respect to Securities of the Issuer

Except for the right to receive Common Stock upon exercise of the Warrants, the right to convert the Series A Preferred into Common Stock and the transactions described in Item 4, there are no contracts, arrangements, understandings or relationships (legal or otherwise) among the Reporting Persons, the General Partner or any of the Members, with respect to any securities of the Issuer, including but not limited to transfer or voting of any securities of the Issuer, finder's fees, joint ventures, loan or option arrangements, puts or calls, guarantees of profits, division of profits or loss, or the giving or withholding of proxies.

Item 7. Material to be Filed as Exhibits

The following documents are filed as exhibits to this Amendment No. 1:

1. Joint Filing Agreement, dated February 26, 2001 between SCP Private Equity Partners II, L.P. and SCP Private Equity II, LLC.
2. Warrants to Purchase up to 28,571,429 Shares of Common Stock of Breakaway Solutions, Inc.
3. Certificate of Designation for Series A Preferred Stock.
4. Closing Agreement, dated as of April 6, 2001.

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SIGNATURES

After reasonable inquiry and to the best of our knowledge and belief, we certify that the information set forth in this statement is true, complete and correct.

SCP Private Equity Partners II, L.P.



By: SCP Private Equity II General Partner, L.P.,  
its General Partner

By: SCP Private Equity II, LLC,  
its Manager

By: /s/ Wayne B. Weisman

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Name: Wayne B. Weisman

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Title: Manager  
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SCP Private Equity II, LLC

By: /s/ Wayne B. Weisman

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Name: Wayne B. Weisman

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Title: Manager  
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EXHIBIT INDEX

- Exhibit 1 Joint Filing Agreement, dated February 26, 2001 between SCP Private Equity Partners II, L.P. and SCP Private Equity II, LLC.
- Exhibit 2 Warrants to Purchase up to 28,571,429 Shares of Common Stock of Breakaway Solutions, Inc.
- Exhibit 3 Certificate of Designation for Series A Preferred Stock.
- Exhibit 4 Closing Agreement, dated as of April 6, 2001.

JOINT FILING AGREEMENT

The undersigned agree to the joint filing on behalf of each of them of a Schedule 13D (including any and all amendments thereto) with respect to the securities of Breakaway Solutions, Inc., and further agree that this Agreement shall be included as an Exhibit to such filings.

The undersigned further agree that each party hereto is responsible for timely filing of such Schedule 13D and any amendments thereto, and for the completeness and accuracy of the information concerning such party contained therein, provided that neither party is responsible for the completeness or accuracy of the information concerning the other party, unless such party knows or has reason to believe that such information is inaccurate.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed this 26th day of February 2001.

SCP Private Equity Partners II, L.P.

By: SCP Private Equity II General Partner, L.P.,  
its General Partner

By: SCP Private Equity II, LLC,  
its Manager

By: /s/ Wayne B. Weisman

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Name: Wayne B. Weisman

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Title: Manager

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SCP Private Equity II, LLC

By: /s/ Wayne B. Weisman

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Name: Wayne B. Weisman

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Title: Manager



THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR ANY APPLICABLE STATE SECURITIES LAWS. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED, HYPOTHECATED OR OTHERWISE DISPOSED OF ABSENT REGISTRATION OF SUCH SECURITIES UNDER SAID ACT AND SAID LAWS UNLESS THE COMPANY RECEIVES AN OPINION OF COUNSEL SATISFACTORY TO THE COMPANY THAT SUCH REGISTRATION IS NOT REQUIRED.

Void after 5:00 p.m. (Eastern Standard Time), on April 6, 2011

WARRANT  
TO PURCHASE COMMON STOCK OF  
BREAKAWAY SOLUTIONS, INC.

28,571,429 Shares

THIS CERTIFIES that, SCP Private Equity Partners II, L.P. (herein called "Holder"), or registered assigns, is entitled to purchase from Breakaway Solutions, Inc., a corporation organized and existing under the laws of Delaware (herein called the "Company"), at any time after the date hereof and until 5:00 p.m. (Eastern Standard Time) on April 6, 2011, (the "Expiration Date") 28,571,429 fully paid and non-assessable shares of Common Stock of the Company, par value \$0.000125 per share (the "Common Stock"), at a purchase price per share of \$0.70 (the "Exercise Price").

The number of shares of Common Stock to be received upon the exercise of this Warrant and the price to be paid for a share of Common Stock are subject to limitation and adjustment from time to time as hereinafter set forth.

Definitions

"Additional Shares of Capital Stock" shall mean all shares of Capital Stock issued by the Company, except: shares of Common Stock issued or issuable upon exercise of options, warrants (other than outstanding warrants granted in favor of Invest Inc.), convertible securities or other rights outstanding as of April 6, 2001, and shares of Common Stock issued or issuable by the Company or any subsidiary to employees, officers, directors or consultants pursuant to stock option plans that are approved by the Board of Directors of the Company (with an exercise price not less than the fair market value of the Common Stock at the time of the grant) and are permitted by Section 7.4 of the Series A Agreement, unless otherwise approved by the holders of not less than a majority of the outstanding shares of the Series A Preferred Stock.

"Capital Stock" shall mean the Company's Common Stock, and any other stock of any class, whether now or hereafter authorized, which has the right to participate in the distribution of earnings and assets of the Company without limit as to amount or percentage.

"Investor Rights Agreement" means the Investor Rights Agreement between the Company, SCP Private Equity Partners II, L.P., and ICG Holdings, Inc., dated as of April 6, 2001.

"Series A Agreement" means the Series A Preferred Stock Purchase Agreement between the Company, SCP Private Equity Partners II, L.P., and ICG Holdings, Inc., dated as of February 16, 2001.

"Warrant Shares" means the shares of Common Stock deliverable upon exercise of this Warrant, as adjusted from time to time.

#### Section 1. Exercise of Warrant.

(a) This Warrant may be exercised in whole or in part on any business day (the "Exercise Date") and on or before the Expiration Date by presentation and surrender hereof to the Company at its principal office at the following address: 2 Seaport Lane, Boston, MA 02110, or at the office of its stock transfer or warrant agent, if any, (or at such other address as the Company may hereafter notify the Holder in writing) with the Purchase Form annexed hereto duly executed and accompanied by proper payment of the Exercise Price in lawful money of the United States of America in the form of a check, subject to collection, for the number of Warrant Shares specified in the Purchase Form. If this Warrant should be exercised in part only, the Company shall, upon surrender of this Warrant, execute and deliver a new Warrant evidencing the rights of the Holder thereof to purchase the balance of the Warrant Shares purchasable hereunder. Upon receipt by the Company of this Warrant and such Purchase Form, together with proper payment of the Exercise Price, at such office, the Holder shall be deemed to be the holder of record of the Warrant Shares, notwithstanding that the stock transfer books of the Company shall then be closed or that the certificates representing such Warrant Shares shall not then be actually delivered to the Holder. The Company shall pay any and all documentary stamp or similar issue or transfer taxes payable in respect of the issue or delivery of the Warrant Shares.

(b) Notwithstanding the provisions of paragraph (a), the Holder may, at its sole option, elect to exercise this Warrant in whole or in part by receiving Warrant Shares equal to the value (as determined below) of this Warrant, or any part hereof, upon surrender of the Warrant at the principal office of the Company together with notice of such election in which event the Company shall issue to the Holder a number of Warrant Shares calculated on the basis of the following formula:

$$X = \frac{Y(A-B)}{A}$$

Where: X = the number of Warrant Shares to be issued to the Holder

Y = the number of Warrant Shares to be exercised under this Warrant

A = the current fair market value of one share of Common Stock calculated (determined in the manner set forth in Section 3) as of the last business day immediately preceding the exercise of this Warrant

B = the Exercise Price

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Section 2. Reservation of Shares. The Company shall reserve at all times for issuance and delivery upon exercise or conversion of this Warrant all shares of its Common Stock or other shares of Capital Stock of the Company from time to time issuable upon exercise of this Warrant. All such shares shall be duly authorized and, when issued upon the exercise or conversion of this Warrant in accordance with the terms hereof, including payment of the applicable Exercise Price in full, shall be validly issued, fully paid and nonassessable, free and clear of all liens, security interests, charges and other encumbrances or restrictions ("Liens") on sale (other than (i) restrictions pursuant to applicable federal and state securities laws, and (ii) any Liens created by any action or inaction of the Holder of the Warrant Shares) and free and clear of all preemptive rights. If the Common Stock is listed on any national securities exchange or The NASDAQ National Market, the Company shall also list such shares on such exchange subject to notice of issuance or maintain the listing of its Common Stock on The NASDAQ National Market, as the case may be.

Section 3. Fractional Interest. The Company will not issue a fractional share of Common Stock or scrip upon any exercise or conversion of this Warrant. Instead, the Company will deliver its check for the current market value of the fractional share. The current market value of a fraction of a share shall be determined by multiplying the current market price of a full share by the fraction of the share and rounding the result to the nearest cent.

The current market value of a share of Common Stock for purposes of this Section shall be determined as follows:

(i) If the Common Stock is listed on a national securities exchange or admitted to unlisted trading privileges on such exchange or listed for trading on The NASDAQ National Market, the current market value shall be the last reported sale price of the Common Stock on such exchange or Market on the last business day prior to the date of exercise or conversion of this Warrant or if no such sale is made on such day, the average closing bid and asked prices for such day on such exchange or Market; or

(ii) If the Common Stock is not so listed or admitted to unlisted trading privileges, the current market value shall be the

mean of the last reported bid and asked prices reported by the National Quotation Bureau, Inc., on the last business day prior to the date of exercise or conversion; or

(iii) If the Common Stock is not so listed or admitted to unlisted trading privileges and bid and asked prices are not so reported, the current market value per share shall be an amount determined in such reasonable manner as may be prescribed in good faith by the Board of Directors of the Company.

#### Section 4. Exchange, Transfer, Assignment or Loss of Warrant.

(a) Except as otherwise provided in Section 8, the Holder of this Warrant shall be entitled, at its option, without expense and without obtaining the consent of the Company, to assign its interest in this Warrant, or any of the Warrant Shares, in whole or in part, upon presentation and surrender hereof to the Company or its stock transfer agent, if any; provided, however, that the transferee, prior to any such transfer, agrees in writing, in form and substance satisfactory to the Company, to be bound by the terms of this Warrant and provides the Company with an opinion of counsel in such form reasonably acceptable to the Company, that such transfer would not be in violation of the Act or any applicable state securities or blue sky laws.

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(b) Subject to the provisions of Section 8, upon surrender of this Warrant to the Company or at the office of its stock transfer agent or warrant agent, with the Assignment Form annexed hereto duly executed and funds sufficient to pay any transfer tax, the Company shall, without charge, execute and deliver a new Warrant or Warrants in the name of the assignee or assignees named in such instrument of assignment and, if the Holder's entire interest is not being assigned, in the name of the Holder, and this Warrant shall promptly be canceled.

(c) This Warrant may be divided by or combined with other Warrants which carry the same rights upon presentation hereof at the principal office of the Company or at the office of its stock transfer or warrant agent, if any, together with a written notice specifying the names and denominations in which new Warrants are to be issued and signed by the Holder hereof. The term "Warrant" as used herein includes any warrants into which this Warrant may be divided or exchanged.

(d) This Warrant is exchangeable, upon the surrender thereof by the Holder at the principal office of the Company, for new Warrants of like tenor registered in the Holder's name and representing in the aggregate the right to purchase the number of shares purchasable under the Warrant being exchanged, each of such new Warrants to represent the right to subscribe for and purchase such number of shares as shall be designated by the Holder at the time of such surrender.

Section 5. Rights of the Holder. The Holder shall not, by virtue hereof, be entitled to any rights of a stockholder in the Company, either at law or equity, and the rights of the Holder are limited to those set forth in this Warrant.

Section 6. Adjustment of Exercise Price and Number of Shares. The number and kind of securities purchasable upon the exercise of this Warrant and the Exercise Price shall be subject to adjustment from time to time upon the occurrence of certain events, as follows:

(a) Reclassification, Consolidation or Merger. In case of any reclassification or change of outstanding securities issuable upon exercise or conversion of this Warrant (other than a change in par value, or from par value to no par value, or from no par value to par value or as a result of a subdivision or combination) or in case of any consolidation or merger of the Company with or into another corporation (other than a merger with another corporation in which the Company is a continuing corporation and which does not result in any reclassification or change, other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of outstanding securities issuable upon the exercise of this Warrant), the Company, or such successor or purchasing corporation, as the case may be, shall, without payment of any additional consideration therefor, execute a new warrant providing that the Holder of the Warrant shall have the right to exercise such new warrant (upon terms not less favorable to the Holder than those then applicable to this Warrant) and to receive upon such exercise, in lieu of each share of Common Stock theretofore issuable upon exercise or conversion of this Warrant, the kind and amount of shares of stock, other securities, money or property receivable upon such reclassification, change, consolidation or merger by the Holder of one share of Common Stock issuable upon exercise or conversion of this Warrant had the Warrants been exercised or converted immediately prior to such reclassification, change, consolidation, or merger. Such new warrant shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Section 6. The provisions of this subsection 6(a) shall similarly apply to successive reclassifications, changes, consolidations, or mergers.

(b) Subdivision or Combination of Shares. If the Company at any time while this Warrant remains outstanding and unexpired, shall subdivide or combine its Capital Stock, the Exercise Price shall be proportionately reduced, in case of subdivision of shares, as of the effective date of such

subdivision, or, if the Company shall take a record of holders of its Capital Stock for the purpose of so subdividing, as of such record date, whichever is earlier, or shall be proportionately increased, in the case of combination of shares, as of the effective date of such combination, or, if the Company shall take a record of holders of its Capital Stock for the purpose of so combining,



as of such record date, whichever is earlier.

(c) Certain Dividends and Distributions. If the Company at any time while this Warrant is outstanding and unexpired shall:

(i) Stock Dividends. Pay a dividend in shares of, or make another distribution of shares of, its Capital Stock, then the Exercise Price shall be adjusted, as of the date the Company shall take a record of the holders of its Capital Stock for the purpose of receiving such dividend or other distribution (or if no such record is taken, as at the date of such payment or other distribution), to that price determined by multiplying that Exercise Price in effect immediately prior to such payment or other distribution by a fraction (a) the numerator of which shall be the total number of shares of Capital Stock outstanding immediately prior to such dividend or distribution, and (b) the denominator of which shall be the total number of shares of Capital Stock outstanding immediately after such dividend or distribution; or

(ii) Liquidating Dividends, Etc. Make a distribution of its assets to the holders of its Capital Stock as a dividend in liquidation or by way of return of capital or other than as a dividend payable out of earnings or surplus legally available for dividends under applicable law, the Holder shall, upon its exercise, be entitled to receive, in addition to the number of shares of Common Stock receivable thereupon, and without payment of any additional consideration therefor, a sum equal to the amount of such assets as would have been payable to it as owner of that number of shares of Common Stock receivable by exercise or conversion of the Warrant had it been the Holder of record of such Common Stock on the record date for such distribution, or if no such record is taken, as of the date of such distribution, and an appropriate provision therefor shall be made a part of any such distribution.

(d) Issuance of Additional Shares of Capital Stock. If the Company at any time while this Warrant remains outstanding and unexpired shall issue any Additional Shares of Capital Stock (otherwise than as provided in the foregoing subsections (6) (a) through (6) (c) above) at a price per share less, or for other consideration lower, than the Exercise Price, or without consideration, then upon such issuance the Exercise Price shall be adjusted to the price per share paid for such Additional Shares of Common Stock (but not less than the par value of the Common Stock). The provisions of this subsection 6(d) shall not apply under any of the circumstances for which an adjustment is provided in subsections 6(a), 6(b) or 6(c). No adjustment of the Exercise Price shall be made under this subsection 6(d) upon the issuance of any Additional Shares of Capital Stock which are issued pursuant to the exercise of any warrants, options or other subscription or purchase rights or pursuant to the exercise of any conversion or exchange rights in any convertible securities if any such adjustments shall previously have been made upon the issuance of any such warrants, options or other rights or upon the issuance of any convertible securities (or upon the issuance of any warrants, options or any rights

therefor) pursuant to subsections 6(e) or 6(f) hereof.

(e) Issuance of Warrants, Options or Other Rights. In case the Company shall issue any warrants, options or other rights to subscribe for or purchase any Additional Shares of Capital Stock and the price per share for which Additional Shares of Capital Stock may at any time thereafter be issuable pursuant to such warrants, options or other rights shall be less than the Exercise Price per share of Common Stock hereunder, then upon such issuance the Exercise Price shall be adjusted as provided in

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subsection 6(d) hereof on the basis that the aggregate consideration for the Additional Shares of Capital Stock issuable pursuant to such warrants, options or other rights, shall be deemed to be the consideration received by the Company for the issuance of such warrants, options, or other rights plus the minimum consideration to be received by the Company for the issuance of Additional Shares of Capital Stock pursuant to such warrants, options, or other rights.

(f) Issuance of Convertible Securities. In case the Company shall issue any securities (debt or equity) convertible into Additional Shares of Capital Stock and the consideration per share for which Additional Shares of Capital Stock may at any time thereafter be issuable pursuant to the terms of such convertible securities shall be less than the Exercise Price, then upon such issuance the Exercise Price shall be adjusted as provided in subsection 6(d) hereof on the basis that (i) the maximum number of Additional Shares of Capital Stock necessary to effect the conversion or exchange of all such convertible securities shall be deemed to have been issued as of the date of issuance of such convertible securities, and (ii) the aggregate consideration for such maximum number of Additional Shares of Capital Stock shall be deemed to be the minimum consideration received by the Company for the issuance of such Additional Shares of Capital Stock pursuant to the terms of such convertible securities. No adjustment of the Exercise Price shall be made under this subsection upon the issuance of any convertible securities which are issued pursuant to the exercise of any warrants or other subscription or purchase rights therefor, if any such adjustment shall previously have been made upon the issuance of such warrants or other rights pursuant to subsection 6(e) hereof.

(g) Adjustment of Number of Shares. Upon each adjustment in the Exercise Price pursuant to any provisions of this Section 6, the number of shares of Common Stock purchasable hereunder shall be adjusted, to the nearest one hundredth of a whole share, to the product obtained by multiplying such number of shares purchasable immediately prior to such adjustment by a fraction, the numerator of which shall be the Exercise Price immediately prior to such adjustment and the denominator of which shall be the Exercise Price immediately thereafter.

(h) Other Provisions Applicable to Adjustments Under this Section. The following provisions will be applicable to the making of adjustments in the Exercise Price hereinabove provided in this Section 6:

(i) Computation of Consideration. To the extent that any Additional Shares of Capital Stock or any convertible securities (debt or equity) or any warrants, options or other rights to subscribe for or purchase any Additional Shares of Capital Stock or any convertible securities (debt or equity) shall be issued for a cash consideration, the consideration received by the Company therefor shall be deemed to be the amount of the cash received by the Company therefor, or, if such Additional Shares of Capital Stock or convertible securities (debt or equity) are offered by the Company for subscription, the subscription price, or, if such Additional Shares of Capital Stock or convertible securities (debt or equity) are sold to underwriters or dealers for public offering without a subscription offering, or through underwriters or dealers for public offering without a subscription offering, the initial public offering price, in any such case excluding any amounts paid or incurred by the Company for and in the underwriting of, or otherwise in connection with the issue thereof. To the extent that such issuance shall be for a consideration other than cash, then, except as herein otherwise expressly provided, the amount of such consideration shall be deemed to be the fair value of such consideration at the time of such issuance as determined in good faith by the Company's Board of Directors. The consideration for any Additional Shares of Capital Stock issuable pursuant to any warrants, options or other rights to subscribe for or purchase the same shall be the consideration received by the Company for issuing such warrants, options or other rights, plus the additional consideration payable to the

Company upon the exercise of such warrants, options or other rights. The consideration for any Additional Shares of Capital Stock issuable pursuant to the terms of any convertible securities (debt or equity) shall be the consideration paid or payable to the Company in respect of the subscription for or purchase of such convertible securities, plus the additional consideration, if any, payable to the Company upon the exercise of the right of conversion or exchange in such convertible securities. In case of the issuance at any time of any Additional Shares of Capital Stock or convertible securities (debt or equity) in payment or satisfaction of any dividend upon any class of stock preferred as to dividends in a fixed amount, the Company shall be deemed to have received for such Additional Shares of Capital Stock or convertible securities a consideration equal to the amount of such dividend so paid or satisfied.

(ii) Readjustment of Exercise Price. Upon the expiration of the right to convert or exchange any convertible securities (debt or equity), or upon the expiration of any rights, options or warrants,

the issuance of which convertible securities, rights, options or warrants effected an adjustment in the Exercise Price, if any such convertible securities shall not have been converted or exchanged, or if any such rights, options or warrants shall not have been exercised, the number of shares of Capital Stock deemed to be issued and outstanding by reason of the fact that they were issuable upon conversion or exchange of any such convertible securities or upon exercise of any such rights, options, or warrants shall no longer be computed as set forth above, and such Exercise Price shall forthwith be readjusted and thereafter be the price which it would have been (but reflecting any other adjustments in the Exercise Price made pursuant to the provisions of this Section 6 after the issuance of such convertible securities, rights, options or warrants) had the adjustment of the Exercise Price made upon the issuance or sale of such convertible securities or issuance of rights, options or warrants been made on the basis of the issuance only of the number of Additional Shares of Capital Stock actually issued upon conversion or exchange of such convertible securities, or upon the exercise of such rights, options or warrants, and thereupon only the number of Additional Shares of Capital Stock actually so issued shall be deemed to have been issued and only the consideration actually received by the Company (computed as in subsection (6) (h) (i) hereof) shall be deemed to have been received by the Company.

(iii) Treasury Shares. The number of shares of Capital Stock at any time outstanding shall not include any shares thereof then directly or indirectly owned or held by or for the account of the Company.

(iv) Other Action Affecting Capital Stock. In case after the date hereof the Company shall take any action affecting the Capital Stock, other than an action described in any of the foregoing subsections (6) (a) to (6) (f) hereof, inclusive, which in the opinion of the Company's Board of Directors would have a materially adverse effect upon the rights of the Holder to purchase the Warrant Shares, the Exercise Price shall be adjusted in such manner and at such time as the Board of Directors may in good faith determine to be equitable in the circumstances.

(i) Notice of Certain Actions. In the event that:

(i) the Company shall authorize the issuance to all holders of its Common Stock of rights, warrants, options or convertible securities to subscribe for or purchase shares of its Common Stock or of any other subscription rights, warrants, options or convertible securities; or

(ii) the Company shall authorize the distribution to all holders of its Common Stock of evidences of its indebtedness or assets (other than dividends paid in or distributions of the Company's Capital Stock for which the Exercise Price shall have been adjusted pursuant to subsection (6) (a) or cash dividends or cash distributions payable out of consolidated current or retained earnings as shown on the books of the Company and paid in the ordinary course of business); or

(iii) the Company shall authorize any capital reorganization or reclassification of the Common Stock (other than a subdivision or combination of the outstanding Common Stock and other than a change in par value of the Common Stock) or of any consolidation or merger to which the Company is a party and for which approval of any shareholders of the Company is required (other than a consolidation or merger in which the Company is the continuing corporation and that does not result in any reclassification or change of the Common Stock outstanding), or of the conveyance or transfer of the properties and assets of the Company as an entirety or substantially as an entirety; or

(iv) the Company is the subject of a voluntary or involuntary dissolution, liquidation or winding-up procedure; or

(v) the Company proposes to take any action (other than actions of the character described in subsections (6) (a), (6) (b), (6) (c), (6) (d) or (6) (e) that would require an adjustment of the Exercise Price pursuant to this Section 6; then the Company shall cause to be mailed by first-class mail to the Holder, at least ten (10) days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date as of which the holders of Common Stock of record to be entitled to receive any such rights, warrants or distributions are to be determined, or (y) the date on which any such consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities or other property, if any, deliverable upon such reorganization, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up.

Section 7. Officers' Certificate. Whenever the Exercise Price shall be adjusted as required by the provisions of Section 6, the Company shall forthwith file in the custody of its secretary or an assistant secretary at its principal office an officers' certificate showing the adjusted Exercise Price determined as herein provided, setting forth in reasonable detail the facts requiring such adjustment and the manner of computing such adjustment. Each such officers' certificate shall be signed by the chairman, president or chief financial officer of the Company and by the secretary or any assistant secretary of the Company. A copy of each such officers' certificate shall be promptly mailed, by

certified mail, to the Holder and the original shall be made available at all reasonable times for inspection by any other holder of a Warrant executed and delivered pursuant to Section 4 hereof.

Section 8. Transfer to Comply with the Securities Act of 1933; Registration Rights; Co-Sale Agreement. No sale, transfer, assignment, hypothecation or other disposition of this Warrant or of the Warrant Shares shall be made if such transfer, assignment or other disposition would result in a violation of the Act, or any state securities laws. Upon exercise of this Warrant, the Holder shall, if requested by the Company, confirm in writing, in a form reasonably satisfactory to the Company, that the shares of Common Stock so purchased are being acquired solely for the Holder's own account, and not as a nominee thereof, for investment, and not with a view toward distribution or resale, except as permitted by the Act, and shall provide such other information to the Company as the Company may reasonably

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request. Any Warrant and any Warrants issued upon exercise of, substitution for, or upon assignment or transfer of this Warrant, as the case may be, and all shares of Common Stock issued upon exercise hereof or conversion thereof shall bear legends (in addition to any legend required by state securities laws) in substantially the form set forth on the first page of this Warrant, unless and until such securities have been transferred pursuant to an effective registration statement under the Act or may be freely sold to the public pursuant to Rule 144 (or any successor rule thereto) or otherwise.

Section 9. Registration Rights. The Holder and any transferee of the Warrant or the Warrant Shares issuable hereunder shall have the right to require the Company to register the Warrant Shares with the Securities and Exchange Commission for resale as provided in the Investor Rights Agreement.

Section 10. Modification and Waiver. Neither this Warrant nor any term hereof may be changed, waived, discharged or terminated other than by an instrument in writing signed by the Company and by the holder hereof.

Section 11. Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder or the Company shall be delivered or shall be sent by certified mail or documented overnight delivery service, postage prepaid, or by telecopy, receipt acknowledged, to the Holder at its address as shown on the books of the Company or to the Company at the address indicated therefor in Section 1 of this Warrant.

Section 12. Descriptive Headings and Governing Law. The descriptive headings of the several sections and paragraphs of this Warrant are inserted for convenience only and do not constitute a part of this Warrant. This Warrant shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the Commonwealth of Pennsylvania.

Section 13. No Impairment. The Company will not knowingly avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by it, but will at all times in good faith assist in the carrying out of all of the provisions of this Warrant.

IN WITNESS WHEREOF, the Company has duly caused this Warrant to be signed by its duly authorized officer and to be dated as of April 6, 2001

BREAKAWAY SOLUTIONS, INC.

By: /s/ William P. Loftus

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Name: William P. Loftus

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Title: President and Chief Executive Officer  
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PURCHASE FORM

Dated \_\_\_\_\_

The undersigned hereby irrevocably elects to exercise the within Warrant to purchase \_\_\_\_\_ shares of Common Stock and hereby makes payment of \$ \_\_\_\_\_ in payment of the exercise price thereof.

-----  
[PRINT OR TYPE NAME OF ENTITY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ASSIGNMENT FORM

Dated \_\_\_\_\_

FOR VALUE RECEIVED, \_\_\_\_\_ hereby sells,  
assigns and (please type or print in block letters)

transfers unto \_\_\_\_\_ (the  
"Assignee"), of (please type or print in block letters)

\_\_\_\_\_  
(Address)

its right to purchase up to \_\_\_\_\_ shares of Common Stock represented by this  
Warrant and does hereby irrevocably constitute and appoint

\_\_\_\_\_ Attorney, to transfer the same on the books of  
the Company, with full power of substitution in the premises.

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[PRINT OR TYPE NAME OF ENTITY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



CERTIFICATE OF DESIGNATION OF  
SERIES A PREFERRED STOCK  
OF  
BREAKAWAY SOLUTIONS, INC.

Breakaway Solutions, Inc., a corporation organized and existing under the General Corporation Law of the State of Delaware (the "GCL"),

DOES HEREBY CERTIFY THAT:

Pursuant to authority conferred upon the Board of Directors by the Certificate of Incorporation of said corporation, and pursuant to the provisions of Section 151 of the GCL, said Board of Directors by the written consent taken pursuant to Section 141 of the GCL, adopted a resolution creating Six Hundred Thousand (600,000) shares of Series A Preferred Stock, which resolution is attached hereto as Exhibit "A".

IN WITNESS WHEREOF, said Breakaway Solutions, Inc. has caused this certificate to be signed by its President and Chief Executive Officer, this 6th day of April, 2001.

By: /s/ William P. Loftus

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Name: William P. Loftus  
Title: President and CEO

EXHIBIT A  
RESOLUTION OF THE BOARD OF DIRECTORS  
APPROVING  
THE DESIGNATION STATEMENT  
RELATING TO SERIES A PREFERRED STOCK

WHEREAS, the Third Amended and Restated Certificate of Incorporation of the Corporation authorizes the Corporation to issue a total of 5,000,000 shares of Preferred Stock, par value \$.0001 per share ("Preferred Stock"), which may be divided into one or more series as the Board of Directors may determine;

WHEREAS, the Certificate of Incorporation of the Corporation expressly

vests in the Board of Directors the authority to fix and determine the designations, powers, preferences, and rights, and the qualifications, limitations and restrictions thereof, of the Preferred Stock; and

WHEREAS, the Board of Directors deems it advisable to designate a series of the Preferred Stock consisting of Six Hundred Thousand (600,000) shares designated as Series A Preferred Stock;

NOW, THEREFORE, IT IS HEREBY RESOLVED, that pursuant to Paragraph FOURTH of the Certificate of Incorporation of the Corporation, there be and hereby is authorized and created a series of Preferred Stock hereby designated as Series A Preferred Stock, to consist of 600,000 shares, having a par value of \$0.0001 per share, which series shall have the voting rights, designations, powers, preferences, relative and other special rights, and the qualifications, limitations and restrictions set forth below:

SERIES A PREFERRED STOCK. Six Hundred Thousand (600,000) of the authorized shares of Preferred Stock are hereby designated "Series A Preferred Stock" (the "Series A Preferred Stock"). The rights, preferences, privileges, restrictions and other matters relating to the Series A Preferred Stock are as follows:

(a) DIVIDEND RIGHTS.

(i) Subject to the right of any other series of Preferred Stock that may from time to time come into existence and which is expressly senior to the rights of the Series A Preferred Stock, the holders of Series A Preferred Stock, in preference to the holders of Common Stock and any other stock of the Company hereafter created which shall be junior to the Series A Preferred Stock (together, "Series A Junior Stock"), shall be entitled to receive dividends, but only out of funds that are legally available therefor, at the rate of 8% of the Series A Original Issue Price (as defined below) per annum (the "Series A Dividend Rate") on each outstanding share of Series A Preferred Stock (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Such dividends shall accrue, whether

or not declared by the Board of Directors, but shall be payable only when, as and if declared by the Board of Directors. Such dividends shall be payable, when and if declared, at the option of the Company either (A) in cash or (B) in additional shares of Series A Preferred Stock (valued at the Series A Original Issue Price (as defined below), as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). Such additional shares of Series A Preferred Stock issued in lieu of the cash dividend are sometimes referred to as "PIK Shares." The original issue price of the Series A Preferred Stock (the "Series A Original Issue Price") shall be \$70.00. Such dividends shall be cumulative and shall accrue quarterly. Notwithstanding the foregoing, (A) in the event of a Qualified Public Offering or a Qualified Sale on or before

the third anniversary of the Series A Original Issue Date, all issued and outstanding PIK Shares shall be canceled, and (B) in the event that any shares of Series A Preferred Stock shall be converted pursuant to Section (d) of this Certificate of Designation on or prior to the expiration of three years from the Series A Original Issue Date, any accrued and unpaid dividends with respect to such shares shall be cancelled.

(ii) So long as any shares of Series A Preferred Stock shall be outstanding, without the prior written consent of the holders of a majority of the then issued and outstanding shares of Series A Preferred Stock, no dividend (other than a stock dividend paid pro rata to the Company's stockholders), whether in cash or property, shall be paid or declared, nor shall any other distribution (other than a stock dividend paid pro rata to the Company's stockholders) be made, on any Series A Junior Stock, nor shall any shares of any Series A Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company (except for acquisitions of Common Stock by the Company pursuant to agreements that permit the Company to repurchase such shares upon termination of services to the Company or in exercise of the Company's right of first refusal upon a proposed transfer) until all dividends (set forth in Section (a)(i) above) on the Series A Preferred Stock shall have been paid or declared and set apart. In the event that the Company shall declare a dividend or distribution payable in securities of other persons, evidences of indebtedness issued by the Company or other persons, or options or rights to purchase any such securities or evidences of indebtedness or other assets (including cash) to the holders of the Common Stock, then the holders of the Series A Preferred Stock shall be entitled to a proportionate share of any such dividend or distribution as though the holders of the Series A Preferred Stock were the holders of the number of shares of Common Stock into which their respective shares of Series A Preferred Stock are convertible as of the record date fixed for the determination of the holders of the Common Stock entitled to receive such dividend or distribution.

(b) VOTING RIGHTS.

(i) General Rights. Except as otherwise provided herein or as required by law, the Series A Preferred Stock shall be voted equally with the shares of the Common Stock of the Company and not as a separate class, at any annual or special

meeting of stockholders of the Company, upon the following basis: each holder of shares of Series A Preferred Stock shall be entitled to such

number of votes as shall be equal to the whole number of shares of Common Stock into which such holder's aggregate number of shares of Series A Preferred Stock, are convertible pursuant to Section (d) hereof immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

(ii) Separate Vote of Series A Preferred Stock. Subject to the rights of any series of Preferred Stock which may hereafter from time to time come into existence, for so long as at least 10% of the Series A Preferred Stock theretofore issued remain outstanding (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series A Preferred Stock), in addition to any other vote or consent required herein or by law, the vote of the holders of at least a majority of the outstanding Series A Preferred Stock shall be necessary for effecting or validating the following actions:

(A) any amendment, alteration, or repeal of any provision of the Certificate of Incorporation (including this Certificate of Designation) or the Bylaws of the Company (including any filing of a Certificate of Designation), that alters or changes or adversely affects the voting or other powers, preferences, or other special rights or privileges, or restrictions of the Series A Preferred Stock;

(B) reclassification or recapitalization of any outstanding shares of securities of the Company into shares having rights, preferences or privileges senior to or on a parity with the Series A Preferred Stock;

(C) authorization or issuance of any other stock having rights, preferences or privileges senior to or on a parity with the Series A Preferred Stock;

(D) reorganization, merger or consolidation with or into any corporation if such reorganization, merger or consolidation would result in the stockholders of the Company immediately prior to such reorganization, merger or consolidation holding less than a majority of the voting power of the stock of the surviving corporation immediately after such reorganization, merger or consolidation;

(E) sale, lease, conveyance or other disposition of, or encumbrance of, all or substantially all the Company's assets in a single transaction or series of related transactions;

(F) liquidation, dissolution or winding-up of the Company;

(G) amendment of the Certificate of Incorporation, as amended, to increase the number of shares of authorized Common Stock or Preferred Stock;

(H) redemption, purchase or other acquisition by the Company, either direct or indirect, of any of the Company's capital stock or other equity securities (including any securities directly or indirectly convertible into or exchangeable or exercisable for such securities) excluding redemptions, repurchases or other reacquisitions at cost with respect to shares issued in accordance with plans or agreements approved by the Board of Directors from current or former employees, consultants, advisors or directors upon or in connection with their death, disability or termination of employment with the Company and excluding the Series A Preferred Stock pursuant to Section (e) below;

(I) authorization, declaration or payment of any dividend (other than a stock dividend paid pro rata to the Company's stockholders) on any shares of Common Stock or Preferred Stock, other than the Series A Preferred Stock; or

(J) increase or decrease the number of authorized shares of Series A Preferred Stock; or

(K) issuance, reservation or authorization of shares of Common Stock or any right or option to purchase Common Stock or other security convertible into Common Stock to employees, consultants or directors in an amount which would result in total options outstanding at any time exceeding 15% of the total number of shares, warrants and options issued and outstanding immediately after the Series A Original Issue Date (as adjusted for any stock dividends, combinations or splits with respect to such shares).

(c) LIQUIDATION RIGHTS.

(i) Upon any liquidation, dissolution, or winding up of the Company, whether voluntary or involuntary, before any distribution or payment shall be made to the holders of any Series A Junior Stock, subject to the rights of any series of Preferred Stock that may from time to time come into existence and which is expressly senior to the rights of the Series A Preferred Stock, the holders of Series A Preferred Stock shall be entitled to be paid out of the assets of the Company an amount per share of Series A Preferred Stock equal to 100% of the Series A Original Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred Stock held by each such holder. If, upon any such liquidation, dissolution, or winding up, the assets of the Company shall be insufficient to make

payment in full to all holders of Series A Preferred Stock, then such assets shall be distributed among the holders of Series A Preferred Stock at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled. After the payment of the foregoing full

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liquidation preference of the Series A Preferred Stock and any other distribution that may be required with respect to any series of Preferred Stock that may from time to time come into existence and which is expressly senior to the rights of the Series A Preferred Stock, the assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of Series A Preferred Stock, on an as converted basis, and the holders of Series A Junior Stock.

(ii) The following events shall be considered a liquidation under this Section, unless by vote or written consent of the holders of at least a majority of the Series A Preferred Stock then outstanding, such holders waive the right to treat any of the following events as a deemed liquidation:

(A) any consolidation or merger of the Company with or into any other corporation or other entity or person, or any other corporate reorganization, in which the stockholders of the Company immediately prior to such consolidation, merger or reorganization, own less than 50% of the Company's voting power immediately after such consolidation, merger or reorganization, or any transaction or series of related transactions to which the Company is a party in which in excess of 50% of the Company's voting power is transferred, excluding any consolidation or merger effected exclusively to change the domicile of the Company (an "Acquisition");

(B) a transaction or a series of related transactions, other than transactions involving a holder of Series A Preferred Stock, in which a majority of the voting power is transferred to a third party (or group of affiliated third parties) who were not previously stockholders of the Company; or

(C) a sale, lease or other disposition of all or substantially all of the assets of the Company (an "Asset Transfer").

(iii) In any of the events set forth in subparagraph (ii), if the consideration received by the Company is other than cash, its value will be deemed its fair market value as determined in good faith by the Board of Directors. Any securities shall be valued as follows:

(A) Securities not subject to restrictions on free marketability covered by subparagraph (B) below:

(1) If traded on a securities exchange or through the Nasdaq National Market (or a similar national quotation system), the value shall be deemed to be the average of the closing prices of the securities on such quotation system over the 30 day period ending three days prior to the closing;

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

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board of Directors.

(B) The method of valuation of securities subject to restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in subparagraphs (iii)(A)(1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board of Directors.

(iv) Written notice of any such liquidation, dissolution or winding up (or deemed liquidation, dissolution or winding up) of the Company within the meaning of this Section, which states the payment date, the place where said payments shall be made and the date on which conversion rights as set forth herein terminate as to such shares (which shall be not less than 10 days after the date of such notice), shall be given by first class mail, postage prepaid, or by telecopy or facsimile, not less than 20 days prior to the payment date stated therein, to the then holders of record of Series A Preferred Stock, such notice to be addressed to each such holder at its address as shown on the records of the Company.

(d) CONVERSION RIGHTS. The holders of the Series A Preferred Stock shall have the following rights with respect to the conversion of the Series A Preferred Stock into shares of Common Stock:

(i) Optional Conversion. Subject to and in compliance with the provisions of this Section (d), any shares of Series A Preferred Stock may, at the option of the holder, be converted at any time into

fully-paid and nonassessable shares of Common Stock The number of shares of Common Stock to which a holder of Series A Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the "Series A Preferred Conversion Rate" then in effect (determined as provided in subsection (ii)) by the number of shares of Series A Preferred Stock being converted.

(ii) Series A Preferred Conversion Rate. The conversion rate in effect at any time for conversion of the Series A Preferred Stock (the "Series A Preferred Conversion Rate") shall be the quotient obtained by dividing the Series A Original Issue Price by the "Series A Preferred Conversion Price," calculated as provided in subsection (iii) below.

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(iii) Series A Preferred Conversion Price. The conversion price for the Series A Preferred Stock shall initially be \$0.70 (the "Series A Preferred Conversion Price"). Such initial Series A Preferred Conversion Price shall be adjusted from time to time in accordance with this Section (d). All references to the Series A Preferred Conversion Price herein shall mean the Series A Preferred Conversion Price as so adjusted.

(iv) Mechanics of Conversion. Each holder of Series A Preferred Stock who desires to convert the same into shares of Common Stock pursuant to this Section (d) shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent for the Series A Preferred, and shall give written notice to the Company at such office that such holder elects to convert the same. Such notice shall state the number of shares of Series A Preferred being converted. Thereupon, the Company shall promptly issue and deliver at such office to such holder a certificate or certificates for the number of shares of Common Stock to which such holder is entitled and shall promptly pay in cash (at the Common Stock's fair market value determined by the Board of Directors as of the date of conversion) the value of any fractional share of Common Stock otherwise issuable to any holder of Series A Preferred. Such conversion shall be deemed to have been made at the close of business on the date of such surrender of the certificates representing the shares of Series A Preferred to be converted, and the person entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder of such shares of Common Stock on such date.

(v) Adjustment Upon Common Stock Event. Upon the happening of a Common Stock Event (as hereinafter defined) at any time or from time to time after the date that the first share of Series A Preferred is issued (the "Series A Original Issue Date"), the Series A Preferred Conversion Price shall, simultaneously with the happening of such



Common Stock Event, be adjusted by multiplying the Series A Preferred Conversion Price in effect immediately prior to such Common Stock Event by a fraction, (i) the numerator of which shall be the number of shares of Common Stock issued and outstanding immediately prior to such Common Stock Event, and (ii) the denominator of which shall be the number of shares of Common Stock issued and outstanding immediately after such Common Stock Event, and the product so obtained shall thereafter be the Series A Preferred Conversion Price. The Series A Preferred Conversion Price shall be readjusted in the same manner upon the happening of each subsequent Common Stock Event. As used in this Section (d), the term "Common Stock Event" shall mean (i) the issue by the Company of additional shares of Common Stock as a dividend or other distribution on outstanding Common Stock, (ii) a subdivision of the outstanding shares of Common Stock into a greater number of shares of Common Stock (by stock split, reclassification or otherwise), or (iii) a combination or consolidation, by reclassification or otherwise, of the outstanding shares of Common Stock into a smaller number of shares of Common Stock.

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(vi) Adjustment for Other Dividends and Distributions. If at any time or from time to time after the Series A Original Issue Date the Company pays a dividend or makes another distribution to the holders of the Common Stock (or fixes a record date for the determination of holders of Common Stock entitled to receive such dividend or other distribution) payable in securities of the Company or any of its subsidiaries other than shares of Common Stock, then in each such event provision shall be made so that the holders of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable upon conversion thereof, the amount of securities of the Company which they would have received had their Series A Preferred Stock been converted into Common Stock on the date of such event (or such record date, as applicable) and had they thereafter, during the period from the date of such event (or such record date, as applicable) 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 (d) with respect to the rights of the holders of the Series A Preferred Stock or with respect to such other securities by their terms.

(vii) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after the Series A Original Issue Date, the Common Stock issuable upon the conversion of the Series A Preferred Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification or otherwise (other than an Acquisition or Asset Transfer as defined in Section (c) or a subdivision or combination of shares or stock dividend or a reorganization, merger, consolidation or

sale of assets provided for elsewhere in this Section (d)), in any such event each holder of Series A Preferred Stock shall have the right thereafter to convert such stock into the kind and amount of stock and other securities and property receivable upon such recapitalization, reclassification or other change by holders of the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof.

(viii) Adjustment for Reorganizations, Mergers or Consolidations. If at any time or from time to time after the Series A Original Issue Date, there is a capital reorganization of the Common Stock or the merger or consolidation of the Company with or into another corporation or another entity or person (other than an Acquisition or Asset Transfer as defined in Section (c) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section (d)), as a part of such capital reorganization, provision shall be made so that the holders of the Series A Preferred Stock shall thereafter be entitled to receive upon conversion of the Series A Preferred Stock the number of shares of stock or other securities or property of the Company to which a holder of the number of shares of Common Stock deliverable upon conversion would have been entitled on such capital reorganization, subject to adjustment in respect of such stock or securities by the terms thereof.

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In any such case, appropriate adjustment shall be made in the application of the provisions of this Section (d) with respect to the rights of the holders of Series A Preferred Stock after the capital reorganization to the end that the provisions of this Section (d) (including adjustment of the Series A Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series A Preferred Stock) shall be applicable after that event and be as nearly equivalent as practicable.

(ix) Sale of Shares Below Series A Preferred Conversion Price.

(A) If at any time or from time to time after the Series A Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection (ix) to have issued or sold Additional Shares of Common Stock (as defined in subsection (ix)(B)(1) below), other than (w) as a dividend or distribution on the Series A Preferred Stock, (x) in connection with a Common Stock Event as provided in subsection (v) above, (y) as a dividend or other distribution on any class of stock as provided in subsection (vi) above, and (z) a subdivision or combination of

shares of Common Stock as provided in subsection (vii) above, for an Effective Price (as defined in subsection (ix) (B) (4) below) less than the then effective Series A Preferred Conversion Price, then and in each such case the then existing Series A Preferred Conversion Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price equal to the price per share paid for such Additional Shares of Common Stock (but not less than the par value of the Common Stock).

(B) Certain Definitions. For the purpose of making any adjustment required under this subsection (ix):

(1) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued (or, pursuant to this Section, deemed to be issued) by the Company, whether or not subsequently reacquired or retired by the Company, other than: (A) shares of Common Stock issued or issuable upon exercise of options, warrants (other than outstanding warrants granted in favor of Invest Inc.), convertible securities or other rights outstanding as of the Series A Original Issue Date; and (B) shares of Common Stock issued or issuable by the Company or any subsidiary to employees, officers, directors or consultants pursuant to stock option plans that are permitted by Section 7.4 of the Series A Preferred Stock Purchase Agreement, dated as of February 16, 2001, among the Company, SCP Private Equity Partners II, L.P., and ICG Holdings, Inc., unless otherwise approved by the holders of not less than a majority of the outstanding shares of Series A Preferred Stock;

(2) The "Aggregate Consideration Received" by the Company for any issue or sale (or deemed issue or sale) of securities shall (i) (A) to the extent it consists of cash, be computed at the gross

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amount of cash received by the Company before deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale and without deduction of any expenses payable by the Company; (B) to the extent it consists of property other than cash, be computed at the fair value of that property at the time of such issue as determined in good faith by the Board; and (C) if Additional Shares of Common Stock, Convertible Securities or Rights or Options are issued or sold together with other stock or securities or other assets of the Company for a

consideration which covers both, be computed as the portion of the consideration so received that may be reasonably determined in good faith by the Board to be allocable to such Additional Shares of Common Stock, Convertible Securities or Rights or Options or (ii) if no consideration is received by the Company, be considered zero;

(3) "Convertible Securities" shall mean any evidence of indebtedness, stock or other securities directly or indirectly convertible into or exchangeable for shares of Common Stock;

(4) The "Effective Price" of Additional Shares of Common Stock shall mean the quotient determined by dividing the total number of Additional Shares of Common Stock issued or sold, or deemed to have been issued or sold by the Company by the provisions of clause (1), into the Aggregate Consideration Received, or deemed to have been received by the Company by the provisions of this clause (4), for such issue or sale of such Additional Shares of Common Stock; and

(5) "Rights or Options" shall mean warrants, options or other rights to purchase or otherwise acquire shares of Common Stock or Convertible Securities.

(C) Deemed Issuances. For the purpose of making any adjustment to the Series A Preferred Conversion Price required under this subsection (ix), if the Company issues or sells any Rights or Options or Convertible Securities (or shall fix a record date for the determination of holders of any class of securities then entitled to receive any such Rights or Options or Convertible Securities), then the Company shall be deemed (x) to have issued, at the time of the issuance of such Rights or Options or Convertible Securities, that number of Additional Shares of Common Stock that is equal to the maximum number of shares of Common Stock issuable upon exercise of such Rights or Options or conversion or exchange of such Convertible Securities upon their issuance (or, in the case such a record date shall have been fixed, as of the close of business on such record date) and (y) to have received, as the Aggregate Consideration Received for the deemed issuance of such additional shares of Common Stock, an amount equal to the total amount of the consideration, if any, received by the

Company for the issuance of such Rights or Options or Convertible Securities, plus, in the case of such Rights or Options, the minimum total amount of consideration, if any, payable to the Company upon the exercise in full of such Rights or Options (including, with respect to Rights or Options for Convertible Securities, the minimum aggregate

amount of consideration payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Rights or Options) upon the conversion or exchange of such underlying Convertible Securities), plus, in the case of Convertible Securities, the minimum total amount of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion or exchange thereof; provided that:

(1) if the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, then the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses;

(2) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities is reduced or the maximum number of shares of Common Stock issuable upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities is increased over time or upon the occurrence or non-occurrence of specified events, other than by reason of antidilution or similar protective adjustments, then the Series A Preferred Conversion Price computed upon the original issue or deemed issue thereof (or upon the occurrence of a record date with respect thereto), and any subsequent adjustments based thereon, shall, upon any such decrease or increase becoming effective, be recomputed to reflect such decrease or increase, as the case may be (provided, however, that no such adjustment of the Series A Preferred Conversion Price shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock); and

(3) if the minimum amount of consideration payable to the Company upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities is subsequently increased or the maximum number of shares of Common Stock issuable upon the exercise of such Rights or Options or the conversion or exchange of such Convertible Securities is subsequently decreased, then the Series A Preferred Conversion Price computed upon the original issue or deemed 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, as the case may be, (provided, however, that no such adjustment of the Series A Preferred Conversion Price shall

affect Common Stock previously issued upon conversion of the Series A Preferred Stock, and further provided that no readjustment pursuant to this clause (3) shall have the effect of increasing the Series A Preferred Conversion Price to an amount which exceeds the lower of (A) the Series A Preferred Conversion Price on the original adjustment date, or (B) the Series A Preferred Conversion Price that would have resulted from any issuance of Additional Shares of Common Stock between the original adjustment date and such readjustment date).

No further adjustment of the Series A Preferred Conversion Price, adjusted upon the issuance of such Rights or Options or Convertible Securities, shall be made as a result of the actual issuance of shares of Common Stock on the exercise of any such Rights or Options or the conversion or exchange of any such Convertible Securities. If any such Rights or Options or the conversion rights represented by any such Convertible Securities shall expire without having been fully exercised, then the Series A Preferred Conversion Price as adjusted upon the issuance of such Rights or Options or Convertible Securities (or upon the occurrence of the record date with respect thereto), and any subsequent adjustments based thereon, shall be readjusted to the Series A Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that (x) the only Additional Shares of Common Stock so issued were the shares of Common Stock, if any, that were actually issued or sold on the exercise of such Rights or Options or rights of conversion or exchange of such Convertible Securities and (y) the consideration received with respect to Additional Shares of Common Stock was the consideration actually received by the Company upon such exercise of such Rights or Options, plus the consideration, if any, actually received by the Company for the granting of all such Rights or Options, whether or not exercised, plus the consideration received for issuing or selling all such Convertible Securities actually converted or exchanged, plus the consideration, if any, actually received by the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) on the conversion or exchange of such Convertible Securities provided, however, that no such adjustment of the Series A Preferred Conversion Price shall affect Common Stock previously issued upon conversion of the Series A Preferred Stock. In the case of any Rights or Options which expire by their terms not more than 30 days after the date of issue thereof, no adjustment of the Series A Preferred Conversion Price shall be made (except as to shares of Series A Preferred Stock converted in such period) until the expiration or exercise of all such Rights or Options, whereupon such adjustment shall be made in the same manner provided above. If any such record date shall have been fixed and such Rights or Options or Convertible Securities are not issued on the date fixed thereof, the adjustment previously made in the Series A Preferred Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and shall instead be made on

(x) Waiver. The Series A Preferred Conversion Price adjustment provisions of this Section 4 may be waived by the written consent of the holders of at least a majority of the outstanding Series A Preferred Stock, voting together as a single class.

(xi) Certificate of Adjustment. In each case of an adjustment or readjustment of the Series A Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series A Preferred Stock, if the Series A Preferred Stock is then convertible pursuant to this Section (d), the Company, at its expense, shall compute such adjustment or readjustment in accordance with the provisions 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 Series A Preferred Stock at the holder's address as shown in the Company'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 (i) the consideration received or deemed to be received by the Company for any Additional Shares of Common Stock issued or sold or deemed to have been issued or sold, (ii) the Series A Preferred Conversion Price at the time in effect, (iii) the number of Additional Shares of Common Stock and (iv) the type and amount, if any, of other property which at the time would be received upon conversion of the Series A Preferred Stock.

(xii) Notices of Record Date. Upon (i) any taking by the Company 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 or other distribution, or (ii) any Acquisition (as defined in Section (c)) or other capital reorganization of the Company, any reclassification or recapitalization of the capital stock of the Company, any merger or consolidation of the Company with or into any other corporation, or any Asset Transfer (as defined in Section (c)), or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series A Preferred Stock at least 10 days prior to the record date specified therein (or such shorter period approved by a majority of the outstanding Series A Preferred Stock) a notice specifying (A) 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, (B) the date on which any such Acquisition, reorganization, reclassification,

transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Common Stock (or other securities) shall be entitled to exchange their shares of Common Stock (or other securities) for securities or other property deliverable upon such Acquisition, reorganization, reclassification, transfer, consolidation, merger, Asset Transfer, dissolution, liquidation or winding up.

(xiii) Automatic Conversion.

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(A) Each share of Series A Preferred Stock shall automatically be converted into shares of Common Stock, based on the then-effective Series A Preferred Conversion Price, (A) at any time upon the written consent of the holders of at least a majority of the outstanding shares of the Series A Preferred Stock, (B) upon the closing of a Qualified Public Offering, or (C) upon a Qualified Sale. The term "Qualified Public Offering" shall mean a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Common Stock for the account of the Company in which (i) the per share price is at least four times the then effective Series A Preferred Conversion Price, and (ii) the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$60,000,000. The term "Qualified Sale" shall mean an Acquisition or Asset Transfer (as defined in Section (c)) which provides for minimum consideration payable with respect to each share of Common Stock (on a fully diluted basis) of at least three times the then effective Series A Preferred Conversion Price in cash or Liquid Stock. The term "Liquid Stock" shall mean capital stock which is registered under Section 12(b) or Section 12(g) of the Securities Exchange Act of 1934, as amended, the disposition of which would not be significantly restricted by low trading volume or otherwise; provided, that capital stock which is either (i) listed for trading on the NASDAQ National Market System with average daily trading volume over the past six months of at least 100,000 shares, or (ii) listed for trading on the New York Stock Exchange, Inc. shall be deemed to be Liquid Stock. Upon such automatic conversion, any accrued and unpaid dividends shall be paid in accordance with the provisions of Section (a).

(B) Upon the occurrence of any of the events specified in subparagraph (A), the outstanding shares of Series A



Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; provided, however, that the Company shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares of Series A Preferred Stock are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Series A Preferred Stock, the holders of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series A Preferred Stock. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Common Stock into which the shares of Series A Preferred Stock surrendered were convertible on the date on

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which such automatic conversion occurred. If the conversion is in connection with an underwritten offering of securities pursuant to the Securities Act, the conversion may, at the option of any holder tendering shares of Series A Preferred Stock for conversion, be conditioned upon the closing with the underwriters of the sale of securities pursuant to such offering, in which event the holder entitled to receive the Common Stock upon conversion of the Series A Preferred Stock shall not be deemed to have converted such Series A Preferred Stock until immediately prior to the closing of such sale of securities.

(xiv) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of Series A Preferred Stock. All shares of Common Stock (including fractions thereof) issuable upon conversion of more than one share of Series A Preferred Stock 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 Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the Common Stock's fair market value (as determined by the Board of Directors) on the date of

conversion.

(xv) Reservation of Stock Issuable Upon Conversion. The Company shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of effecting the conversion of the shares of the Series A Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Series A Preferred Stock. If at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Series A Preferred Stock, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

(xvi) Notices. Any notice required by the provisions of this Section (d) shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) 5 days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) 1 day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

(xvii) Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or delivery of shares of Common Stock upon conversion of shares of Series A Preferred Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Common Stock in a

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name other than that in which the shares of Series A Preferred Stock so converted were registered.

(xviii) No Impairment. The Company shall not avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Company, but shall at all times in good faith assist in carrying out all such actions as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series A Preferred Stock against impairment.

(xix) Satisfaction of Accrued Dividends. Except as otherwise expressly provided, upon the conversion of any shares of Series A Preferred Stock into Common Stock as provided herein, the holders thereof shall be entitled to receive a payment in satisfaction of all accrued but unpaid dividends, subject to limitations regarding the cancellation of PIK Shares contained in this Section.

(e) OPTIONAL REDEMPTION.

(i) Redemption at Option of Holders of Series A Preferred Stock. At any time on and after January 20, 2006, at the request of any holder of Series A Preferred Stock, such holder may require the Company to redeem all, but not less than all, of the shares of Series A Preferred Stock held by such holder in accordance with the provisions contained in this Section (e). In no event shall the Company be required to redeem shares in excess of the amount permitted by law; provided, however, that such inability to redeem shall not have any impact or effect upon the per-share Series A Redemption Price (as hereinafter defined). All redemptions shall be made in the order in which notices of redemption are received (with any notice of redemption received within 25 days of delivery of notice by an Initial Redeeming Holder (as hereinafter defined) under subsection (iii) being treated as having been received simultaneously with that of the Initial Redeeming Holder), and, if less than all of the shares submitted for redemption in a particular 25-day period are capable of being redeemed, then such shares shall be redeemed on a pro rata basis, based on the number of shares that each stockholder submitted for redemption.

(ii) Redemption Price of Series A Preferred Stock. The price at which the Series A Preferred Stock shall be redeemed (the "Series A Redemption Price") shall be equal to the Series A Original Issue Price (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A Preferred Stock plus accrued but unpaid dividends.

(iii) Exercise of Option to Redeem Series A Preferred Stock. If a holder of Series A Preferred Stock desires to exercise such holder's option to redeem all, but not less than all, of such holder's shares of Series A Preferred Stock pursuant to this Section (e), such holder (the "Initial Redeeming Holder") must give written notice to the Company specifying the number of shares to be redeemed, and the Company shall promptly provide a copy of such notice to each other holder of Series A Preferred

Stock. No later than 25 days after receipt by the Company of notice of the Initial Redeeming Holder, if any other holder of Series A

Preferred Stock also wishes to redeem all of such holder's shares of Series A Preferred Stock at the same time as the redemption of the shares of the Initial Redeeming Holder, such additional holder shall provide a notice comparable to that of the Initial Redeeming Holder to the Company and the Company shall promptly provide a copy of such notice to each other holder of Series A Preferred Stock. Redemptions shall be made on a date 30 calendar days after the date on which the Company receives the notice of the Initial Redeeming Holder (or the first business day thereafter). Each such date of redemption shall be a "Series A Redemption Date." To receive the Series A Redemption Price, the holder of shares of Series A Preferred Stock must present and surrender the certificate or certificates representing such shares (duly endorsed for transfer) to the Company at the principal executive offices of the Company no later than three business days prior to the Series A Redemption Date. The Company shall pay the Series A Redemption Price to, or to the order of, the person whose name appears on such certificate or certificates as the owner thereof. The Company shall pay the entire Series A Redemption Price on the Series A Redemption Date.

(iv) Effect of Redemption. From and after the Series A Redemption Date, unless the Company shall default in providing for the payment of the Series A Redemption Price, all dividends on such shares requested to be redeemed pursuant to this Section (e) shall cease to accrue, and all rights of the holders of any such shares subject to redemption as stockholders of the Company with respect to such shares, except the right to receive the Series A Redemption Price, shall cease and terminate. Any shares of Series A Preferred Stock that are redeemed by the Company shall be retired and shall not be reissued.

(v) Failure to Redeem. If the Company shall for any reason fail to redeem any shares of Series A Preferred Stock as required by this Section (e), and such failure shall continue for a period of 30 days, then notwithstanding anything to the contrary contained in this Certificate of Designation, with respect to all shares of Series A Preferred Stock then outstanding: (i) the conversion rights set forth in Section (d) hereof shall continue beyond any date for redemption specified in said Section, and said rights may be exercised at any time; and (ii) the Company may not, other than in the ordinary course of business, incur any indebtedness for money borrowed or borrow or reborrow any amounts under any lines of credit or any other borrowing facility which it may then have outstanding without the prior written consent of the holders of at least a majority of the then outstanding shares of Series A Preferred Stock, unless the proceeds of such incurrence of such indebtedness or borrowing or reborrowing are to be used to make all redemptions then required to be made; and (iii) dividends shall continue to accrue and be paid in accordance with and as defined in Section (a), and, to the extent not paid, shall be added to the Series A Redemption Price. Nothing herein shall limit the Company's obligations to redeem as set forth above, or limit the remedies available to the holders of Series A Preferred Stock in the

event of a failure of the Company to honor such obligations.

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(f) WAIVER. Any rights of the holders of Series A Preferred Stock set forth herein may be waived by the affirmative vote or consent of the holders of a majority of the shares of Series A Preferred Stock then outstanding.

(g) LIMITATION ON REISSUANCE OF SHARES. No share of shares of Series A Preferred Stock acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued, and all such shares shall be cancelled, retired and eliminated from the shares that the Company is authorized to issue.

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## CLOSING AGREEMENT

The undersigned are parties to the certain Series A Preferred Stock Purchase Agreement dated as of February 16, 2001 ("Purchase Agreement"). This Closing Agreement ("Agreement") sets forth certain terms under which the parties agree to proceed with the Closing. The term Closing Date shall mean and refer to April 6, 2001; all other defined terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

Breakaway Solutions, Inc ("Breakaway") hereby acknowledges that a number of the Purchasers' conditions to Closing, set forth in Section 5 of the Purchase Agreement ("Conditions") and in the Plan, have not been satisfied, and that the Purchasers therefore have no obligation to purchase the Initial Preferred Stock or to take any of the other actions that the Purchase Agreement provides for them to take. Breakaway is entering into this Agreement for the benefit of the Purchasers, and to induce them to proceed with the Closing. Moreover, Breakaway expressly acknowledges and agrees that the Purchasers have each relied, and will continue to rely, upon the representations, warranties and agreements made by Breakaway herein, in proceeding with the Closing and implementing the other provisions of the Purchase Agreement.

Breakaway hereby represents, warrants and covenants as follows:

1. Breakaway has delivered to the Purchasers good standing or qualification certificates for the following states: Arizona, California, Colorado, Delaware, Florida, Minnesota, New York, Pennsylvania, Texas and Wisconsin. Its good standing has lapsed in the following states due to its failure to file annual reports: Massachusetts and Illinois, but steps to reinstate it in good standing are currently in process and are expected to be completed by May 10, 2001. Breakaway is precluded from the use of the courts in such states, as a result. However, such preclusion shall not have a material adverse effect upon its business.
2. An accurate and complete copy of the Report of Inspector relating to Breakaway's Special Meeting of Stockholders held on April 2, 2001 is attached hereto as Exhibit "A".
3. Attached hereto as Exhibit "B" are accurate and complete copies of the notices given and filings made with The NASDAQ-Amex Market Group in connection with the transactions contemplated under the Purchase Agreement. Attached hereto as Exhibit "C" are accurate and complete copies of the correspondence between Breakaway and The NASDAQ-Amex Market Group with respect to Breakaway's issuance of shares of common stock to Invest, Inc., and the issuance of shares of Series A Preferred Stock to the Purchasers. Attached hereto as Exhibit "D" are accurate and complete copies of the correspondence from The NASDAQ-Amex Market Group to Breakaway with respect

to its possible delisting due to non-compliance with The NASDAQ-Amex Market Group listing requirement with respect to minimum stock price.

4. The Worker Adjustment Retraining Notification Act ("Act") has not been triggered by nor is it applicable to any of the layoffs conducted by Breakaway to this date in 2001, including sequential layoffs in the same offices. It is anticipated that the Act will or may apply to the proposed closings of its offices in Maynard, MA in April 2001. To the extent the Act is applicable to such closings and such closings are effected, Breakaway will provide all applicable and appropriate notices required under the Act.

5. Accurate and complete copies of resolutions adopted by Breakaway's Board of Directors are attached hereto as Exhibit "E". Such resolutions have not been altered, amended or repealed and remain in full force and effect as of the date hereof. Breakaway maintains Primary Director and Officer Liability Insurance in the amount of \$5 million (per occurrence and in the aggregate), and \$25 million of Excess Director and Officer Liability Insurance coverage. All such policies are fully paid and in force until October 2001.

6. Breakaway is not in payment default under its equipment leasing facilities with Silicon Valley Bank ("SVB") and Transamerica Equipment Financial Services ("TEFS"). It is seeking to renegotiate its agreement with SVB to eliminate the covenant default thereunder which persists. Breakaway is seeking to terminate, pay down and refinance its facility with TEFS. Breakaway is in default under its leasing agreements with Deutsche Financial Services.

7. Breakaway has also requested from SVB a working capital line of credit, secured by its accounts receivable, and access for various Breakaway customers to financing from SVB for certain payments made by them on those receivables. If it is unable to reach agreement with SVB on this financing, it will proceed with discussions with Heller Financial, Sunrock Capital Corp and others, regarding a similar financing.

8. Through Argus Management, Breakaway has contacted approximately 66% (200) of its trade creditors with claims in excess of \$5000 to establish payment plans, and has reached agreement or is in discussions with virtually all of those approached, including a number of Breakaway's major creditors. Argus Management continues to be engaged for this service by Breakaway, under an "at will" contract permitting its termination without penalty by Breakaway at any time.

9. For the duration of Phoenix Management Services, Inc's engagement by Breakaway, all material disbursements to any vendors (by check or wire), and the incurrence of any material absolute or contingent liability to any person or entity, whether in a single or series of transactions, must be approved in writing or be specifically authorized by a representative of Phoenix.

10. Aptera has not to date exercised its option to extend the license beyond the initial term under the Software License Agreement of December 15, 2001, or paid the \$3 million license fee contemplated thereunder.

11. Breakaway will continue to research the bases for the purported forgiveness of indebtedness to Katalyst, LLC, and will give notice to rescind such forgiveness, and pursue full payment of the amount supposedly forgiven, if it is determined not to have been duly or properly authorized.

12. The notes payable by Breakaway to the former Zartis shareholders are being renegotiated, with the objective of significantly reducing the aggregate obligation and/or restructuring the payment obligation such that it can be met over a period of years.

13. Breakaway has provided to the Purchasers copies of the entire contents of its minute books, including without limitations, those relating to all meetings and consents of directors held or circulated during 2000, and 2001 to date.

In consideration of the foregoing, and in reliance thereupon, the Purchasers have elected to proceed with the Closing, notwithstanding that a number of Conditions have not been satisfied, including without limitation the Condition that there be no material adverse change in the financial condition of Breakaway. By agreement, SCP will by fundings today and Monday April 9, 2001, fund an aggregate of \$2.9 million, and ICG will fund an aggregate of \$1.45 million, in each case subject to such deductions and charges as are indicated to Breakaway in connection with such fundings. Breakaway hereby reaffirms the Plan, and acknowledges that by its terms, the Plan shall survive the Closing and remain in effect until complied with in full to the satisfaction of the Purchasers. The parties hereto agree that the Closing shall be fully effective, upon consummation, notwithstanding that certain of the Conditions have not been satisfied by Breakaway.

IN WITNESS WHEREOF, the Purchasers do hereby accept and agree to the foregoing, and the parties have executed this Agreement on and as of April 6, 2001.

BREAKAWAY SOLUTIONS, INC.

By: /s/ William P. Loftus

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Name: William P. Loftus

Title: President and Chief Executive Officer

SCP PRIVATE EQUITY PARTNERS II, L.P.

By: SCP Private Equity II General Partner, L.P.,  
its General Partner

By: SCP Private Equity II, LLC, its Manager



By: /s/ Wayne B. Weisman

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Name: Wayne B. Weisman

Title: Manager

ICG HOLDINGS, INC.

By: /s/ Henry N. Nassau

-----  
Name: Henry N. Nassau

Title: Vice President and Secretary