

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF ABOVE ALL SOFTWARE, INC.**

Above All Software, Inc., a corporation organized and existing under the laws of the State of Delaware, hereby certifies as follows:

1. The name of the corporation is Above All Software, Inc.
2. The date of filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was March 19, 2002, and it was amended and restated on October 9, 2002.
3. This Amended and Restated Certificate of Incorporation restates and integrates and further amends the Certificate of Incorporation of the corporation as herein set forth in full:

ARTICLE I

The name of the corporation (hereinafter, the "*Corporation*") is Above All Software, Inc.

ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 15 East North Street, City of Dover, County of Kent, and the name of the registered agent of the Corporation in the State of Delaware at such address is Incorporating Services, Ltd.

ARTICLE III

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

ARTICLE IV

The Corporation is authorized to issue two classes of stock, designated "*Common Stock*" and "*Preferred Stock*," each with a par value of \$0.001 per share. The total number of shares of Common Stock that the Corporation is authorized to issue is 43,061,725 shares. The total number of shares of Preferred Stock that the Corporation is authorized to issue is 25,361,725 shares.

The first series of Preferred Stock shall be comprised of 9,999,997 shares and shall be designated "*Series A Preferred Stock*," and the second series of Preferred Stock shall be comprised of 15,361,728 shares and shall be designated "*Series B Preferred Stock*." The relative rights, preferences, privileges and restrictions granted to or imposed upon the Series A Preferred Stock and Series B Preferred Stock are as follows:

1. Dividends.

(a) The holders of the then outstanding Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors, out of assets legally available therefor, prior and in preference to any declaration or payment of any dividend or other transfer of cash or properties by the Corporation to one or more stockholder without consideration (a "***Distribution***") on the Common Stock (payable other than in Common Stock or other securities or rights convertible into or entitling the holder thereof to receive, directly or indirectly, additional shares of Common Stock), dividends at the annual rate of \$0.052 per share of Series A Preferred Stock and \$0.648 per share of Series B Preferred Stock, each as adjusted for any stock splits, reverse stock splits, stock dividends, and similar recapitalization events (each a "***Recapitalization Event***"). No dividends shall be paid on any share of Common Stock unless a dividend (including the amount of any dividends paid or Distributions made pursuant to the above provisions of this Section 1) is paid with respect to all outstanding shares of Preferred Stock in an amount for each such share of Preferred Stock equal to or greater than the aggregate amount of such dividends for all shares of Common Stock into which each such share of Preferred Stock could then be converted. Payments of any dividends to the holders of each such series of Preferred Stock shall be paid pro rata, on an equal priority, pari passu basis according to their respective dividend preferences as set forth herein. The right to dividends on shares Preferred Stock shall not be cumulative, and no right shall accrue to holders of Preferred Stock by reason of the fact that dividends on said shares are not declared in any period, nor shall any undeclared or unpaid dividend bear or accrue interest.

(b) If, after dividends in the full preferential amounts specified in this Section 1 for the Preferred Stock have been paid or declared and set apart in any calendar year of the Corporation, the Board shall declare additional dividends out of funds legally available therefore in that calendar year, then such additional dividends shall be declared pro rata on the Common Stock and the Preferred Stock on a pari passu basis according to the number of shares of Common Stock held by such holders, where each holder of shares of Preferred Stock is to be treated for this purpose as holding the greatest whole number of shares of Common Stock then issuable upon conversion of all shares of Preferred Stock held by such holder pursuant to Section 3.

(c) Whenever a dividend or Distribution provided for in this Section 1 shall be payable in property other than cash, the value of such dividend or Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

2. Liquidation Preference. In the event of the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the assets and funds of the Corporation available for distribution to stockholders shall be distributed as follows:

(a) First, the holders of shares of Preferred Stock then outstanding shall be entitled to receive, out of the assets of the Corporation available for distribution to its stockholders, before any payment (or any setting apart of any payment or distribution) shall be made in respect of the Corporation's Common Stock, an amount equal to \$0.65 per share of Series A Preferred Stock (the "***Original Series A Price***") and \$0.81 per share of Series B

Preferred Stock (the "**Original Series B Price**"), each as adjusted for any Recapitalization Events, plus all declared and unpaid dividends thereon to the date fixed for such distribution. If, upon the occurrence of such event, the assets of the Corporation legally available for distribution are insufficient to permit the payment to the holders of Preferred Stock of the full preferential amount described in this Section 2(a), then the entire assets available for distribution to stockholders shall be distributed to the holders of the Preferred Stock ratably in proportion to the full preferential amounts which they would be entitled to receive pursuant to the preceding sentence of this Section 2(a).

(b) After the full preferential amounts due the holders of Preferred Stock pursuant to Section 2(a) have been paid or set aside, the remaining assets of the Corporation available for distribution to its stockholders, if any, shall be distributed to the holders of Common Stock and Preferred Stock ratably in proportion to the number of shares of Common Stock then held, or issuable upon conversion of the shares of Preferred Stock then held, by each holder, until, (i) with respect to the Series A Preferred Stock, such holders have received an aggregate of two times the Original Series A Price (including amounts received pursuant to Section 2(a)) at which time the holders of Series A Preferred Stock shall no longer share ratably in the assets then remaining for distribution, and (ii) with respect to the Series B Preferred Stock, such holders have received an aggregate of two times the Original Series B Price (including amounts received pursuant to Section 2(a)) at which time the holders of Series B Preferred Stock shall no longer share ratably in the assets then remaining for distribution, thereafter, any remaining assets of the Corporation available for distribution to its stockholders shall be distributed to the holders of Common Stock ratably in proportion to the number of shares of Common Stock then held by each holder

(c) A sale, conveyance or other disposition (other than a transfer or distribution by pledge or mortgage to a bona fide lender) of all or substantially all of the property or business of the Corporation, or a merger or consolidation with or into another entity, or any other transaction or series of related transactions (other than (i) a consolidation with a wholly-owned subsidiary of the Corporation, (ii) a merger effected exclusively to change the domicile of the Corporation, or (iii) an equity financing in which the Corporation is the surviving corporation) in which the stockholders of the Corporation immediately prior to such transaction do not own, immediately following the consummation of the transaction, by virtue of their shares in the Corporation or securities received in exchange for such shares in connection with the transaction, a majority of the voting power of the surviving entity in proportions substantially similar to those that existed immediately prior to such transaction and with substantially the same rights, preferences, and privileges as the shares they held immediately prior to the transaction, or the sale, transfer or other disposition (other than a transfer or distribution by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of the Corporation (other than to a wholly-owned subsidiary) (each such transaction or series of transaction a "**Change of Control Transaction**") shall be deemed to be a liquidation of the Corporation as that term is used in this Section 2.

(d) In the event of any liquidation of the Corporation involving the distribution of assets other than cash to the stockholders of the Corporation, the value of the assets to be distributed shall be determined as follows:

(i) In the case of securities that are not subject to investment letter or other similar restrictions on free tradability,

(A) unless otherwise specified in a definitive agreement if traded on a national securities exchange or through the Nasdaq National Market, the value shall be deemed to be the average of the closing prices of the securities over the 30 day period ending three days prior to the closing;

(B) unless otherwise specified in a definitive agreement, if actively traded over-the-counter, the value shall be deemed to be the average of (i) the average of the last bid and ask prices or (ii) the closing sale prices (whichever is applicable) over the 30 day period ending three days prior to the closing; and

(C) unless otherwise specified in a definitive agreement, if there is no active public market, the value shall be the fair market value thereof, as mutually determined by the Corporation and the holders of a least a majority of the voting power of all then outstanding shares of Preferred Stock.

(ii) In the case of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate or by virtue of a contractual lock-up agreement), the value shall be based on an appropriate discount from the market value determined as above in Section 2(d)(i) to reflect the approximate fair market value thereof, as mutually determined by the Corporation and the holders of at least a majority of the voting power of all then outstanding shares of Preferred Stock.

(iii) In the case of any other property, the value shall be equal to the property's fair market value, as determined in good faith by the Board of Directors of the Corporation.

3. **Conversion.** The holders of the Preferred Stock shall have conversion rights as follows:

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share, at the office of the Corporation or any transfer agent for the Preferred Stock, into a number of fully paid and nonassessable shares of Common Stock, with respect to the Series A Preferred Stock, equal to the Original Series A Price divided by the Conversion Price for the Series A Preferred Stock in effect at the time of conversion, and with respect to the Series B Preferred Stock, equal to the Original Series B Price divided by the Conversion Price for the Series B Preferred Stock in effect at the time of conversion. The Conversion Price for the Series A Preferred Stock shall initially be \$0.65 and the Conversion Price for the Series B Preferred Stock shall initially be \$0.81, each subject to adjustment as provided in Section 3(d) below.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully paid and nonassessable shares of Common Stock, at the then effective Conversion Price, upon (i) the vote or written consent of at least a majority of the voting power represented by the then outstanding shares of Preferred Stock or (ii) the closing of a firm

commitment underwritten public offering pursuant to an effective registration statement on Form S-1 or Form SB-2 (or a successor form) under the Securities Act of 1933 covering the offer and sale of Common Stock at an offering price of not less than three times the Original Series B Purchase Price, as adjusted for any Recapitalization Event, with aggregate gross proceeds to the Corporation (prior to underwriters' commissions and expenses) of not less than \$25,000,000.

(c) **Mechanics of Conversion.** Before any holder of Preferred Stock shall be entitled to convert the same into shares of Common Stock, such holder shall surrender the certificate or certificates therefor, duly endorsed, at the headquarters of the Corporation or of any transfer agent for the Corporation and shall give written notice to the Corporation at such office that the holder elects to convert the same and shall state therein the name or names in which the certificate or certificates for shares of Common Stock are to be issued (except that no such written notice of election to convert shall be necessary in the event of an automatic conversion pursuant to Section 3(b) hereof). The Corporation shall promptly issue and deliver at such office to such holder of Preferred Stock, or to the nominee or nominees of such holder, a certificate or certificates for the number of shares of Common Stock to which he shall be entitled as aforesaid. Such conversion shall be deemed to have been made immediately prior to the close of business on the date of such surrender of the shares of Preferred Stock to be converted (except that, in the case of an automatic conversion upon an initial public offering pursuant to Section 3(b), such conversion shall be deemed to have been made immediately prior to the closing of the offering) and the person or persons entitled to receive the shares of Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such shares of Common Stock on such date. Upon the occurrence of either of the events specified in Section 3(b) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided, however*, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation against any loss incurred by it in connection with such certificates.

(d) **Adjustments to Conversion Price for Dilutive Issuances.**

(i) **Special Definitions.** For purposes of this Section 3(d), the following definitions shall apply:

(A) "***Original Issue Date***" shall mean, with respect to the Series A Preferred Stock, the date on which the first share of Series A Preferred Stock is issued, and with respect to the Series B Preferred Stock, the date on which the first share of Series B Preferred Stock is issued by the Corporation.

(B) "***Additional Shares of Common Stock***" shall mean all shares of Common Stock issued (or, pursuant to Section 3(d)(ii) below, deemed to be issued) by the Corporation after the Original Issue Date, other than:

(1) shares of Common Stock issued in connection with a firm commitment underwritten public offering;

(2) shares of Common Stock issued upon conversion of Preferred Stock;

(3) 9,700,000 shares of Common Stock, which are reserved as of the date herein for issuance under the Corporation's stock plan, issued or issuable to officers, directors or employees of, or consultants to, the Corporation, including shares or options issued prior to the Original Issue Date, provided that shares that are repurchased at the original purchase price upon termination of service and shares issuable upon options that expire or are terminated shall no longer be treated as having been issued prior to the Original Issue Date;

(4) 300,000 shares issued or issuable to equipment lessors, lenders or other financial institutions in a commercial lending transaction or arrangement approved by the Board of Directors;

(5) shares issuable upon exercise or conversion of any convertible securities that are outstanding as of the date of this Amended and Restated Certificate of Incorporation;

(6) shares issued in connection with the acquisition by the Corporation of voting control or all or substantially all of the assets of another business entity in a transaction approved by the Board of Directors;

(7) shares for which an adjustment is made pursuant to Section 3(d)(v); or

(8) shares issued in connection with acquisitions of technology or intellectual property in transactions that are approved by the Board of Directors.

(C) "*Options*" shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire either Common Stock or Convertible Securities (as defined below).

(D) "*Convertible Securities*" shall mean any evidences of indebtedness, shares of Preferred Stock or other securities convertible into or exchangeable for Common Stock.

(ii) **Deemed Issue of Additional Shares of Common Stock.** In the event the Corporation at any time or from time to time after the Original Issue Date shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the following provisions shall apply:

(A) The maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or upon the

conversion or exchange of such Convertible Securities shall be deemed to be Additional Shares of Common Stock, except as provided for under Section 3(d)(i)(B), issued as of the time of the issuance of such Option or Convertible Security or, in case such a record date shall have been fixed, as of the close of business on such record date.

(B) Except as provided in paragraphs (C) and (D) below, no further adjustment in the Conversion Price shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock upon the exercise of such Options or conversion or exchange of such Convertible Securities.

(C) If such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change resulting from any antidilution provisions of such Options or Convertible Securities), the Conversion Price computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon any such increase or decrease becoming effective, be recomputed to reflect such increase or decrease insofar as it affects such Options or the rights of conversion or exchange under such Convertible Securities; provided, however, that such recomputed Conversion Price shall not exceed the Conversion Price that would have been in effect had the original issuance of Options or Convertible Securities not been deemed to constitute an issuance of Additional Shares of Common Stock.

(D) Upon the expiration of any such Options or Convertible Securities, the Conversion Price, to the extent in any way affected by or computed using such Options or Convertible Securities, shall be recomputed to reflect the issuance of only the number of shares of Common Stock actually issued upon the exercise of such Options or Convertible Securities.

(iii) **Adjustment of Conversion Price for Dilutive Issuances.** In the event the Corporation shall issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 3(d)(ii)) after the Original Issue Date without consideration or for a consideration per share less than the applicable Conversion Price for a series of Preferred Stock in effect immediately prior to such issuance, then and in each such event the Conversion Price for such series shall be reduced to a price (rounded to the nearest one-tenth of one cent) equal to such Conversion Price multiplied by a fraction:

(x) the numerator of which is equal to the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for the total number of Additional Shares of Common Stock so issued would purchase at the Conversion Price in effect immediately prior to such issuance; and

(y) the denominator of which is equal to the number of shares of Common Stock outstanding immediately prior to such issuance plus the number of Additional Shares of Common Stock so issued.

For the purposes of this paragraph, the number of shares of Common Stock outstanding shall be deemed to include the Common Stock issuable upon full exercise and conversion of all then outstanding Options and Convertible Securities.

(iv) **Determination of Consideration.** For purposes of this Section 3(d), the consideration received by the Corporation for the issue of any Additional Shares of Common Stock shall be computed as follows:

(A) **Cash and Property.** Such consideration shall:

(1) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with the issuance and sale thereof;

(2) insofar as it consists of property other than cash, be computed at the fair value thereof at the time of such issue, as determined by Board of Directors in the good faith exercise of its reasonable business judgment; and

(3) in the event Additional Shares of Common Stock are issued together with other securities or other assets of the Corporation for consideration that covers both, be the proportion of such consideration so received, computed as provided in clauses (1) and (2) above, as determined by Board of Directors in the good faith exercise of its reasonable business judgment.

(B) **Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 3(d) relating to Options and Convertible Securities shall be equal to:

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issuance of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, divided by

(y) the maximum number of shares of Common Stock (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or the conversion or exchange of such Convertible Securities.

(v) **Other Adjustments to Conversion Price.**

(A) **Subdivisions, Combinations or Consolidations of Common Stock.** In the event the outstanding shares of Common Stock shall be subdivided, combined or consolidated, by stock split, reverse stock split or similar event, into a greater or lesser number of

shares of Common Stock after the Original Issue Date of a series of Preferred Stock, the Conversion Price for such series in effect immediately prior to such subdivision, combination or consolidation shall, concurrently with the effectiveness of such subdivision, combination or consolidation, be proportionately adjusted.

(B) Common Stock Dividends and Distributions. If, after the Original Issue Date of a series of Preferred Stock, the Corporation at any time or from time to time issues, or fixes a record date for determination of holders of Common Stock entitled to receive, a dividend or other distribution payable in additional shares of Common Stock, then in each such event, as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, the Conversion Price for such series that is then in effect shall be decreased by multiplying the Conversion Price then in effect by a fraction, (x) the numerator of which is the number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and (y) the denominator of which is the number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution; provided, however, that if such record date is fixed and such dividend or distribution is not paid in full on the date fixed therefor, the Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price shall be adjusted pursuant to this Section 3(d)(v)(B) to reflect the actual payment of such dividend or distribution.

(C) Other Distributions. In case the Corporation shall distribute to holders of its Common Stock shares of its capital stock (other than shares of Common Stock and other than as otherwise subject to adjustment pursuant to this Section 3(d)), stock or other securities of other persons, evidences of indebtedness issued by the Corporation or other persons, assets (excluding cash dividends) or options or rights (excluding options to purchase and rights to subscribe for Common Stock or other securities of the Corporation convertible into or exchangeable for Common Stock), or shall fix a record date for determination of holders of Common Stock entitled to receive such a distribution, then, in each such case, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of the Corporation that they would have received had their Preferred Stock been converted into Common Stock on the date of such event (or on the record date with respect thereto, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock.

(D) Recapitalizations and Reorganizations. In the case of any capital recapitalization or reorganization (other than a subdivision, combination or other recapitalization provided for elsewhere in this Section 3 or a merger or sale of assets provided for in Section 2), or the fixing of any record date for determination of holders of Common Stock affected by such recapitalization or reorganization, provision shall be made so that the holders of Preferred Stock shall be entitled to receive, upon conversion thereof, the number of shares of stock or other securities or property of the Corporation or otherwise that they would have received had their Preferred Stock been converted into Common Stock on the date of such event

(or on the record date with respect thereto, if such record date is fixed) and had they thereafter, during the period from the date of such event to and including the date of conversion, retained such securities receivable by them as aforesaid during such period, subject to all other adjustments called for during such period under this Section 3 with respect to the rights of the holders of the Preferred Stock.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price for a series of Preferred Stock pursuant to this Section 3, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of a share of such series of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based including the consideration received for any Additional Shares of Common Stock issued. The Corporation shall, upon the written request at any time of any holder of a Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect for the series of Preferred Stock held by such holder and (iii) the number of shares of Common Stock and the type and amount, if any, of other property which at the time would be received upon the conversion of a share of such series of Preferred Stock.

(f) Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of shares of Preferred Stock. In lieu of any fractional shares to which the holder of Preferred Stock would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of one share of Common Stock as determined by the Board of Directors of the Corporation. The number of whole shares issuable to each holder of a series of Preferred Stock upon such conversion shall be determined on the basis of the number of shares of Common Stock issuable upon conversion of the total number of shares of such series being converted into Common Stock by such holder at that time.

(g) Notices of Record Date. In the event (i) the Corporation shall take a record of the holders of its capital stock for the purpose of entitling them to receive a dividend or other distribution (other than a cash dividend) or to subscribe for or purchase any shares of stock of any class or to receive any other rights, (ii) of any capital reorganization, reclassification or recapitalization (other than a subdivision or combination of its outstanding shares of Common Stock), or (iii) of the voluntary or involuntary dissolution, liquidation or winding up of the Corporation or any transaction deemed to be a liquidation pursuant to Section 2, then, and in any such case, the Corporation shall cause to be mailed to each holder of record of the Preferred Stock at the address of record of such stockholder as set forth on the Corporation's books, at least 20 days prior to the earliest date hereinafter specified, a notice stating the material terms of the proposed transaction and the date on which (x) a record is to be taken for the purpose of such dividend, distribution or rights or (y) such reorganization, reclassification, recapitalization, dissolution, liquidation or winding up is to take place and the date, if any is to be fixed, as of which holders of capital stock of record shall be entitled to exchange their shares of capital stock for securities or other property deliverable upon such reorganization, reclassification, recapitalization, dissolution, liquidation or winding up; provided, however, that such notice period may be shortened upon the written consent of holders of Preferred Stock that are entitled to such notice rights or similar notice rights and that that represent at least a majority of the voting power of all then outstanding shares of such Preferred Stock. If any material change in

the facts set forth in the written notice shall occur, the Corporation shall promptly give written notice of such material change to each holder of shares of Preferred Stock.

(h) No Impairment. Without obtaining such consent of the holders of Preferred Stock as may be required under Section 5, the Corporation will not, by amendment of its Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation, but will at all times in good faith assist in the carrying out of all the provisions of this Section 3 and in the taking of all such action as may be necessary or appropriate in order to protect the conversion rights of the holders of Preferred Stock against impairment.

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

4. Voting Rights.

(a) General. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held. Each holder of Preferred Stock shall be entitled to a number of votes equal to the number of whole shares of Common Stock into which such holder's shares of Preferred Stock could then be converted and, except as otherwise required by law or as set forth herein, shall have voting rights and powers equal to the voting rights and powers of the Common Stock. Each holder of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the bylaws of the Corporation and shall be entitled to vote together as a single class with the holders of Common Stock with respect to any matter upon which holders of Common Stock have the right to vote, except as otherwise provided herein or those matters required by law to be submitted to a separate class vote. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of Delaware.

(b) Election of Directors. At each election of directors of the Corporation, (i) for so long as at least 1,000,000 shares of Series B Preferred Stock (subject to adjustment for any Recapitalization Events) remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect one (1) director, (ii) for so long as at least 1,000,000 shares of Series A Preferred Stock (subject to adjustment for any Recapitalization Events) remain outstanding, the holders of Series A Preferred Stock, voting as a separate class, shall be

entitled to elect two (2) directors (iii) the holders of Common Stock, voting as a separate class, shall be entitled to elect two (2) directors and (iv) the holders of a majority of each of the Preferred Stock and the Common Stock, with each of the Preferred Stock and the Common Stock voting as a separate class, on an as-converted basis, shall be entitled to elect the remaining directors of the Corporation. In the case of any vacancy (other than a vacancy caused by removal) in the office of a director occurring among the directors elected by the holders of a class or series of stock pursuant to this Section 5(b), the remaining directors so elected by that class or series may by affirmative vote of a majority thereof (or if there are no such directors remaining, by the vote or written consent of the holders of the shares of that class or series) elect a successor or successors to hold office for the unexpired term of the director or directors whose place or places shall be vacant.

(c) At any meeting held for the purpose of electing directors, the presence in person or by proxy (A) of the holders of a majority of the shares of the Series A Preferred Stock or Common Stock then outstanding, respectively, shall constitute a quorum for the election of directors to be elected solely by the holders of the Series A Preferred Stock or Common Stock, respectively, and (B) of holders of a majority of the voting power of all the then-outstanding shares of Preferred Stock and Common Stock shall constitute a quorum for the election of the directors to be elected jointly by the holders of the Preferred Stock and the Common Stock. With respect to the election of any director or directors by the holders of the outstanding shares of a specified class of stock given the right to elect such director or directors pursuant to this Section 4 (the "*Specified Stock*"), that candidate or those candidates (as applicable) shall be elected who either: (i) in the case of any such vote conducted at a meeting of the holders of such Specified Stock, receive the highest number of affirmative votes (on an as-converted basis) of the outstanding shares of such Specified Stock, up to the number of directors to be elected by such Specified Stock; or (ii) in the case of any such vote taken by written consent without a meeting, are elected by the written consent of the holders of a majority of outstanding shares of such Specified Stock. Subject to Section 141(k) of the Delaware General Corporation Law, any director who shall have been elected to the Board of Directors by the holders of any Specified Stock, or by any director or directors elected by holders of any Specified Stock as provided in this Section (4), may be removed during his or her term of office, without cause, by, and only by, the affirmative vote of shares representing a majority of the voting power, on an as-converted basis, of all the outstanding shares of such Specified Stock entitled to vote, given either at a meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders without a meeting, and any vacancy created by such removal may be filled only in the manner provided in this Section 4.

5. Protective Provisions. So long as at least 25% of the Preferred Stock outstanding as of February 7, 2004 remains outstanding (subject to adjustment for any Recapitalization Event), the Corporation shall not, without first obtaining the affirmative vote or written consent of the holders of a majority of the voting power represented by the then outstanding shares of Preferred Stock, voting separately as a class:

(a) enter into a Change of Control Transaction;

(b) modify the rights, preferences and privileges of the Preferred Stock so as to adversely affect the Preferred Stock;

(c) increase the total number of authorized shares of Preferred Stock or Common Stock;

(d) authorize, or obligate itself to issue, or reclassify any outstanding shares of capital stock into, any other equity security (or security convertible into an equity security) having a preference over, or on a parity with, the Preferred Stock with respect to rights, preferences or privileges, including but not limited to dividends, liquidation, redemption or voting;

(e) redeem, purchase or otherwise acquire any shares of Common Stock or Preferred Stock other than in connection with (i) the repurchase of Common Stock at the original purchase price from employees, officers, directors, consultants or other service providers pursuant to agreements providing for such repurchase upon termination of employment or (ii) the exercise of a contractual right of first refusal entitling the Corporation to purchase such shares upon substantially the same terms offered by a third party, provided that the purchase is approved by the Board of Directors;

(f) declare or pay any dividend or make any Distribution on the Common Stock or Preferred Stock, other than a dividend payable solely in shares of Common Stock;

(g) amend the Certificate of Incorporation or Bylaws of the Corporation;

(h) change the authorized number of directors of the Corporation unless approved by the Board of Directors;

(i) issue debt in excess of \$100,000 unless approved by the Board of Directors; or

(j) liquidate or dissolve.

6. **Status of Converted Stock.** In the event any shares of Preferred Stock shall be converted pursuant to Section 3 hereof, or otherwise acquired by the Corporation, the shares so converted shall be canceled and shall not be issuable by the Corporation, and the Certificate of Incorporation of the Corporation shall be periodically amended to effect the corresponding reduction in the Corporation's authorized capital stock.

7. **Consent to Certain Repurchases.** To the extent the Corporation may be subject to Section 2115 of the California Corporations Code, each holder of shares of Preferred Stock shall be deemed to have consented, for purposes of Sections 502, 503 and 506(b)(2) of the California Corporations Code, to any distribution made by the Corporation in connection with the repurchase of shares of Common Stock issued to or held by employees, officers, directors, consultants or other service providers (i) pursuant to agreements providing for such repurchase at the original purchase price, (ii) at a purchase price not exceeding the fair market value of such Common Stock, or (iii) in connection with the exercise of a contractual right of first refusal entitling the Corporation to purchase the shares upon the terms offered by a third party, provided, in the case of clauses (ii) and (iii), that the purchase is approved by the Board of Directors.

8. **Preemptive Rights.** No stockholder of the Corporation shall have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation except to the extent

that such a right may from time to time be set forth in a written agreement between the Corporation and a stockholder.

ARTICLE V

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation. Election of directors need not be by written ballot, unless the Bylaws so provide.

ARTICLE VI

The Board of Directors is authorized to make, adopt, amend, alter or repeal the Bylaws of the Corporation. The stockholders shall also have power to make, adopt, amend, alter or repeal the Bylaws of the Corporation.

ARTICLE VII

To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or may hereafter be amended, a director of the corporation shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any repeal or modification of the foregoing provisions of this Article VII by the stockholders of the corporation shall not adversely affect any right or protection of a director of the corporation existing at the time of, or increase the liability of any director of the corporation with respect to any acts or omissions occurring prior to, such repeal or modification.

ARTICLE VIII

The Corporation reserves the right to amend or repeal any of the provisions contained in this Amended and Restated Certificate of Incorporation in any manner now or hereafter permitted by law, and the rights of the stockholders of the Corporation are granted subject to this reservation.

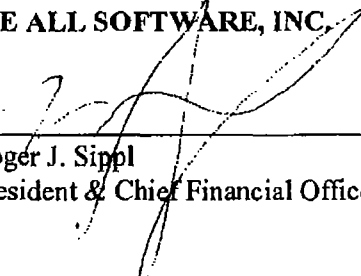
* * *

4. This Amended and Restated Certificate of Incorporation has been duly adopted by the board of directors and stockholders of the Corporation in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

5. This Amended and Restated Certificate of Incorporation has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 and 245 of the General Corporation Law of the State of Delaware. The number of shares held by stockholders who consented to this amendment in writing equaled or exceeded the required percentage. The percentage vote required was more than 50% of the outstanding shares of Common Stock and more than 50% of the outstanding shares of Series A Preferred Stock.

IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been executed by Roger J. Sippl of the Corporation this 6th day of February, 2004.

ABOVE ALL SOFTWARE, INC.

By: 

Roger J. Sippl
President & Chief Financial Officer