

**EIGHTH AMENDED AND RESTATED CERTIFICATE OF  
INCORPORATION  
OF  
ASTORIA SOFTWARE, INC.**

Thomas Steding and Michael Sullivan hereby certify that:

**ONE:** The original name of this corporation is "Continuum Software, Inc.", and the date of filing the original Certificate of Incorporation of this corporation with the Secretary of State of the State of Delaware is December 16, 1994.

**TWO:** They are the duly elected and acting President and Secretary, respectively, of Astoria Software, Inc., a Delaware corporation.

**THREE:** The Certificate of Incorporation of this corporation is hereby amended and restated to read as follows:

**I.**

The name of the corporation is **ASTORIA SOFTWARE, INC.** (the "*Company*").

**II.**

The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of Newcastle, Delaware 19801. The name of the Company's registered agent at said address is The Corporation Trust Company.

**III.**

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the General Company Law of the State of Delaware.

**IV.**

**A.** This Company is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares which the Company is authorized to issue is 38,312,605 shares, 22,170,524 shares of which shall be Common Stock (the "*Common Stock*") and 16,142,081 shares of which shall be Preferred Stock (the "*Preferred Stock*").

**B.** Effective upon the filing of this Amended and Restated Certificate of Incorporation, each outstanding share of Common Stock of this Company shall be reverse split into 1/100th of one share of Common Stock. The Preferred Stock shall have a par value of \$0.001 per share and the Common Stock (after giving effect to the reverse split) shall have a par value of \$0.001 per share.

**C.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company (voting together on an as-if-converted basis).

D. Of the authorized shares of Preferred Stock, 5,612,969 shares are hereby designated "Series A-1 Preferred Stock" (the "*Series A-1 Preferred*") and 10,529,112 shares are hereby designated Series A-2 Preferred Stock (the "*Series A-2 Preferred*", and, together with the Series A-1 Preferred, the "*Series Preferred*").

E. The rights, preferences, privileges, restrictions and other matters relating to the Series Preferred are as follows:

1. **DIVIDEND RIGHTS.**

a. **Series A-2 Preferred.** Holders of Series A-2 Preferred, in preference to the holders of the Series A-1 Preferred and the Common Stock ("*Junior Stock*"), shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series A-2 Original Issue Price (as defined below) per annum on each outstanding share of Series A-2 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "*Series A-2 Original Issue Price*" shall be \$0.720 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

b. **Series A-1 Preferred.** Following any payment of dividends to the holders of the Series A-2 Preferred under Section 1(a) above, the holders of Series A-1 Preferred, in preference to the holders of the Common Stock, shall be entitled to receive, when and as declared by the Board of Directors, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the Series A-1 Original Issue Price (as defined below) per annum on each outstanding share of Series A-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares). The "*Series A-1 Original Issue Price*" shall be \$0.960 per share. Such dividends shall be payable only when, as and if declared by the Board of Directors and shall be non-cumulative.

c. So long as any shares of Series A-2 Preferred shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of Junior Stock, nor shall any shares of any Junior Stock of the Company be purchased, redeemed, or otherwise acquired for value by the Company until all dividends (set forth in Section 1(a) above) on the Series A-2 Preferred shall have been paid or declared and set apart. In the event dividends are paid on any share of Common Stock, an additional dividend shall be paid with respect to all outstanding shares of Series A-2 Preferred in an amount equal per share (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock. The provisions of this Section 1(c) shall not, however, apply to: (i) a dividend on shares of Common Stock payable solely in Common Stock; (ii) the acquisition of shares of any Junior Stock in exchange for shares of any other Junior Stock that is unanimously approved by the Company's Board of Directors; (iii) any repurchase of any outstanding securities of the Company that is unanimously approved by the Company's Board of Directors; or (iv) acquisitions of Common Stock or Preferred Stock by the Company pursuant to agreements which 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, or as specifically contemplated in Section 5 hereof.

## 2. VOTING RIGHTS.

a. **General Rights.** Except as otherwise provided herein or as required by law, the Series Preferred 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, and may act by written consent in the same manner as the Common Stock, in either case upon the following basis: each holder of shares of Series Preferred 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 Preferred are convertible (pursuant to Section 4 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent.

b. **Separate Vote of Series A-2 Preferred.** For so long as at least 2,105,822 shares of Series A-2 Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A-2 Preferred shall be necessary for effecting or validating the following actions:

(i) Any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Series A-2 Preferred Stock;

(ii) Any authorization or designation, whether by reclassification or otherwise, of any class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series A-2 Preferred in right of redemption, liquidation preference, voting, dividends or otherwise;

(iii) Any alteration or change (whether by amendment of the Company's certificate of incorporation or bylaws, merger, consolidation, recapitalization or otherwise) of the voting powers, preferences, or other rights or privileges, or restrictions of the Series A-2 Preferred so as to affect them adversely.

c. **Separate Vote of Series A-1 Preferred.** For so long as at least 1,122,594 shares of Series A-1 Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of the holders of at least a majority of the outstanding Series A-1 Preferred shall be necessary for effecting or validating the following actions:

(i) Any increase or decrease (other than by redemption or conversion) in the authorized number of shares of Series A-1 Preferred Stock;

(ii) Any alteration or change (whether by amendment of the Company's certificate of incorporation or bylaws, merger, consolidation, recapitalization or otherwise) of the voting powers, preferences, or other special rights or privileges, or restrictions of the Series A-1 Preferred so as to affect them adversely.

d. **Separate Vote of Series Preferred.** For so long as at least 3,228,416 shares of Series Preferred (subject to adjustment for any stock split, reverse stock split or other similar event affecting the Series Preferred) remain outstanding, in addition to any other vote or consent required herein or by law, the vote or written consent of: (i) until the earlier of: (A) the one year

anniversary of the Original Issue Date (as defined herein); or (B) the date on which the Company shall have issued more than 7,500,000 shares of Series A-2 Preferred (as adjusted for stock dividends, combinations, splits recapitalizations and the like with respect to such shares) (the "*Standstill Period*"), the holders of 75% of the outstanding Series Preferred; and (ii) after the expiration of the Standstill Period, the holders of a majority of the outstanding Series Preferred, shall be necessary for effecting or validating the following actions:

(i) Any alteration or change (whether by amendment of the Company's certificate of incorporation or bylaws, merger, consolidation, recapitalization or otherwise) of the voting powers, preferences, or other rights or privileges, or restrictions of the Series Preferred so as to affect them adversely.

(ii) Any authorization or any designation, whether by reclassification or otherwise, of any class or series of stock or any other securities convertible into equity securities of the Company ranking on a parity with or senior to the Series Preferred in right of redemption, liquidation preference, voting, dividends or otherwise, or any increase in the authorized or designated number of any such class or series;

(iii) Any redemption, repurchase, payment of dividends or other distributions with respect to Common Stock or Preferred Stock (except for acquisitions of Common Stock or Preferred Stock by the Company pursuant to agreements which 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, or as specifically contemplated in Section 5 hereof);

(iv) Incurrence of indebtedness for borrowed money in excess of \$100,000 in the aggregate without the approval of the Board of Directors;

(v) In any single month, make any payment to any single creditor or employee of the Company in excess of \$50,000 in the aggregate without the approval of the Board of Directors;

(vi) Any increase or decrease in the authorized number of members of the Company's Board of Directors;

(vii) Any Acquisition or Asset Transfer (as defined in Section 3(d)); or

(viii) Any Liquidating Event (as defined in Section 3(a)).

e. **Election of Board of Directors.** For so long as at least 3,228,416 shares of Series Preferred remain outstanding (subject to adjustment for any stock split, reverse stock split or similar event affecting the Series Preferred) and the authorized size of the Company's Board of Directors is five or more, (i) the holders of a majority of the Series A-2 Preferred, voting as a separate class, shall be entitled to elect two members of the Company's Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; (ii) the holders of a majority of the Series A-1 Preferred, voting as a separate class, shall be entitled to elect one member of the Company's Board of Directors at each meeting or pursuant to each consent of

the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors; and (iii) the holders of a majority of the Common Stock and the Series Preferred, voting together as a single class on an as-if-converted basis, shall be entitled to elect all remaining members of the Board of Directors at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors and to fill any vacancy caused by the resignation, death or removal of such directors. No person entitled to vote at an election for directors may cumulate votes to which such person is entitled, unless, at the time of such election, the corporation is subject to Section 2115 of the California General Corporation Law ("CGCL"). During such time or times that the corporation is subject to Section 2115(b) of the CGCL, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (i) the names of such candidate or candidates have been placed in nomination prior to the voting and (ii) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

f. **Removal.** During such time or times that the corporation is subject to Section 2115(b) of the CGCL, the Board of Directors or any individual director may be removed from office at any time without cause by the affirmative vote of the holders of at least a majority of the outstanding shares entitled to vote on such removal; *provided, however*, that unless the entire Board is removed, no individual director may be removed when the votes cast against such director's removal, or not consenting in writing to such removal, would be sufficient to elect that director if voted cumulatively at an election which the same total number of votes were cast (or, if such action is taken by written consent, all shares entitled to vote were voted) and the entire number of directors authorized at the time of such director's most recent election were then being elected.

### 3. LIQUIDATION RIGHTS.

a. **Series A-2 Preferred.** Upon any liquidation, dissolution, or winding up of the Company, or any event deemed to be a liquidation, dissolution or winding up pursuant to Section 3(d) below, whether voluntary or involuntary (collectively, a "**Liquidating Event**"), and before any distribution or payment shall be made to the holders of any Junior Stock, the holders of Series A-2 Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution (if any) an amount per share of Series A-2 Preferred equal to two times the Series A-2 Original Issue Price plus all declared and unpaid dividends on the Series A-2 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A-2 Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A-2 Preferred of the liquidation preference set forth in this Section 3(a), then such assets shall be distributed among the holders of Series A-2 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

b. **Series A-1 Preferred.** After the payment of the full liquidation preference of the Series A-2 Preferred as set forth in Section 3(a) above, the holders of Series A-1 Preferred shall be entitled to be paid out of the assets of the Company legally available for distribution (if any) an amount per share of Series A-1 Preferred equal to the Series A-1 Original Issue Price plus all declared and unpaid dividends on the Series A-1 Preferred (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares) for each share of Series A-1 Preferred held by them. If, upon any such liquidation, distribution, or winding up, the assets of the Company shall be insufficient to make payment in full to all holders of Series A-1 Preferred of the liquidation preference set forth in this Section 3(b), then such assets shall be distributed among the holders of Series A-1 Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled.

c. **Series Preferred and Common Stock.** After the payment of the full liquidation preference of the Series Preferred as set forth in Sections 3(a) and 3(b) above, the remaining assets of the Company legally available for distribution, if any, shall be distributed ratably to the holders of the Common Stock and Series Preferred on an as-if-converted to Common Stock basis; *provided, however*, that in no event shall the holders of Series A-2 Preferred receive, in the aggregate under Sections 3(a) and this Section 3(c), distributions in an amount per share greater than: (i) four times the Series A-2 Original Issue Price; *plus* (ii) the amount of all declared and unpaid dividends on the Series A-2 Preferred, nor shall the holders of Series A-1 Preferred receive, in the aggregate under Sections 3(b) and this Section 3(c), distributions in an amount per share greater than: (i) two times the Series A-1 Original Issue Price; *plus* (ii) the amount of all declared and unpaid dividends on the Series A-1 Preferred.

d. **Deemed Liquidation.** In the event that the Company is a party to an Acquisition or Asset Transfer (as defined below), then each holder of Series Preferred shall be entitled to receive, for each share of Series Preferred then held, out of the proceeds of such Acquisition or Asset Transfer available for distribution to the stockholders, the amount of cash, securities or other property to which such holder would be entitled to receive in a Liquidating Event pursuant to Section 3(a), 3(b) and 3(c) above. The following events shall be considered a liquidation under this Section:

(i) 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**"); or

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

e. **Valuation.** In the case of an Acquisition or Asset Transfer, 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:

(i) Securities not subject to investment letter or other similar restrictions on free marketability covered by (ii) below:

(A) If traded on a securities exchange or through the Nasdaq National Market, 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;

(B) 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

(C) 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.

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

#### 4. CONVERSION RIGHTS.

The holders of the Series Preferred shall have the following rights with respect to the conversion of the Series Preferred into shares of Common Stock (the "*Conversion Rights*"):

a. **Optional Conversion.** Subject to and in compliance with the provisions of this Section 4, any shares of Series Preferred 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 Preferred shall be entitled upon conversion shall be the product obtained by multiplying the appropriate "Series Preferred Conversion Rate" then in effect (determined as provided in Section 4(b)) by the number of shares of Series Preferred being converted.

b. **Series Preferred Conversion Rate.** For the purposes of this Section 4 (and notwithstanding the difference between the Series A-1 Original Issue Price and the Series A-2 Original Issue Price), the conversion rate in effect at any time for conversion of the Series A-1 Preferred shall equal the conversion rate of the Series A-2 Preferred (the "*Series Preferred Conversion Rate*"). The Series Preferred Conversion Rate for both the Series A-1 Preferred and the Series A-2 Preferred shall equal the quotient obtained by dividing the Series A-2 Original Issue Price by the "*Series Preferred Conversion Price*", calculated as provided in Section 4(c).

c. **Series Preferred Conversion Price.** The conversion price for both the Series A-1 Preferred and the Series A-2 Preferred (the "*Series Preferred Conversion Price*") shall initially be equal to the Series A-2 Original Issue Price (notwithstanding the difference between the Series A-1 Original Issue Price and the Series A-2 Original Issue Price). Such initial Series Preferred Conversion Price shall be adjusted from time to time in accordance with this Section 4, and all references to the Series Preferred Conversion Price shall mean the Series Preferred Conversion Price as so adjusted.

d. **Mechanics of Conversion.** Each holder of Series Preferred who desires to convert the same into shares of Common Stock pursuant to this Section 4 shall surrender the certificate or certificates therefor, duly endorsed, at the office of the Company or any transfer agent

for the Series 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 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 (i) in cash or, to the extent sufficient funds are not then legally available therefor, in Common Stock (at the Common Stock's fair market value determined by the Board of Directors as of the date of such conversion), any declared and unpaid dividends on the shares of Series Preferred being converted and (ii) 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 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 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.

e. **Adjustment for Stock Splits and Combinations.** If the Company shall at any time or from time to time after the date that the first share of Series Preferred is issued (the "**Original Issue Date**") effect a subdivision of the outstanding Common Stock without a corresponding subdivision of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before that subdivision shall be proportionately decreased. Conversely, if the Company shall at any time or from time to time after the Original Issue Date combine the outstanding shares of Common Stock into a smaller number of shares without a corresponding combination of the Preferred Stock, the Series Preferred Conversion Price in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 4(e) shall become effective at the close of business on the date the subdivision or combination becomes effective.

f. **Adjustment for Common Stock Dividends and Distributions.** If the Company at any time or from time to time after the Original Issue Date makes, or fixes a record date for the 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 the Series Preferred Conversion Price then in effect shall be decreased as of the time of such issuance or, in the event such record date is fixed, as of the close of business on such record date, by multiplying the Series Preferred Conversion Price then in effect by a fraction (i) the numerator of which is the total 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 (ii) the denominator of which is the total 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 is not fully paid or if such distribution is not fully made on the date fixed therefor, the Series Preferred Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Series Preferred Conversion Price shall be adjusted pursuant to this Section 4(f) to reflect the actual payment of such dividend or distribution.

g. **Adjustment for Reclassification, Exchange and Substitution.** If at any time or from time to time after the Original Issue Date, the Common Stock issuable upon the conversion of the Series Preferred 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 3(d) 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 4), in any such event each holder of Series Preferred 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 Preferred 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.

**h. Reorganizations, Mergers, Consolidations or Sales of Assets.** If at any time or from time to time after the Original Issue Date, there is a capital reorganization of the Common Stock (other than an Acquisition or Asset Transfer as defined in Section 3(d) or a recapitalization, subdivision, combination, reclassification, exchange or substitution of shares provided for elsewhere in this Section 4), as a part of such capital reorganization, provision shall be made so that the holders of the Series Preferred shall thereafter be entitled to receive upon conversion of the Series Preferred 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. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 4 with respect to the rights of the holders of Series Preferred after the capital reorganization to the end that the provisions of this Section 4 (including adjustment of the Series Preferred Conversion Price then in effect and the number of shares issuable upon conversion of the Series Preferred) shall be applicable after that event and be as nearly equivalent as practicable.

**i. Sale of Shares Below Series Preferred Conversion Price.**

(i) If at any time or from time to time after the Original Issue Date, the Company issues or sells, or is deemed by the express provisions of this subsection to have issued or sold, Additional Shares of Common Stock (as defined in subsection (iv) below), other than as a dividend or other distribution on any class of stock as provided in Section 4(f) above, and other than as a subdivision or combination of shares of Common Stock as provided in Section 4(e) above, for an Effective Price (as defined in subsection (iv) below) less than the then effective Series Preferred Conversion Price (a "*Dilutive Issuance*"), then and in each such case the then existing Series Preferred Price shall be reduced, as of the opening of business on the date of such issue or sale, to a price determined by multiplying the Series Preferred Conversion Price by a fraction, (i) the numerator of which shall be: (A) the number of shares of Common Stock "deemed outstanding" (as defined below) immediately prior to such issue or sale; plus (B) the number of shares of Common Stock which the aggregate consideration received (as defined in subsection (ii)) by the Company for the total number of Additional Shares of Common Stock so issued would purchase at such Series Preferred Conversion Price, and (ii) the denominator of which shall be: (C) the number of shares of Common Stock deemed outstanding (as defined below) immediately prior to such issue or sale (and without giving effect to the adjustments contemplated in this paragraph); plus (D) the total number of Additional Shares of Common Stock so issued. For the purposes of the preceding sentence, the number of shares of Common Stock deemed to be outstanding as of a given date shall be the sum of: (X) the number of shares of Common Stock actually outstanding; (Y) the number of shares of Common Stock into which the then outstanding shares of Series Preferred could be converted if fully converted on the day immediately preceding the given date; and (Z) the number of shares of Common Stock which could be obtained through the exercise or conversion of all other rights, options and convertible securities outstanding on the day immediately preceding the given date.

(ii) For the purpose of making any adjustment required under this Section 4(i), the consideration received by the Company for any issue or sale of securities shall (A) to the extent it consists of cash, be computed at the net amount of cash received by the Company after deduction of any underwriting or similar commissions, compensation or concessions paid or allowed by the Company in connection with such issue or sale but 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 as determined in good faith by the Board of Directors, and (C) if Additional Shares of Common Stock, Convertible Securities (as defined in subsection (iii)) or rights or options to purchase either Additional Shares of Common Stock or Convertible Securities 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 of Directors to be allocable to such Additional Shares of Common Stock, Convertible Securities or rights or options.

(iii) For the purpose of the adjustment required under this Section 4(i), if the Company issues or sells (i) stock or other securities convertible into, Additional Shares of Common Stock (such convertible stock or securities being herein referred to as "**Convertible Securities**") or (ii) rights or options for the purchase of Additional Shares of Common Stock or Convertible Securities and if the Effective Price of such Additional Shares of Common Stock is less than the Series Preferred Conversion Price, in each case the Company shall be deemed to have issued at the time of the issuance of such rights or options or Convertible Securities the maximum number of Additional Shares of Common Stock issuable upon exercise or conversion thereof and to have received as consideration for the issuance of such shares 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 amounts of consideration, if any, payable to the Company upon the exercise of such rights or options, plus, in the case of Convertible Securities, the minimum amounts of consideration, if any, payable to the Company (other than by cancellation of liabilities or obligations evidenced by such Convertible Securities) upon the conversion thereof; *provided, however* that if in the case of Convertible Securities the minimum amounts of such consideration cannot be ascertained, but are a function of antidilution or similar protective clauses, the Company shall be deemed to have received the minimum amounts of consideration without reference to such clauses; *provided, further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of rights, options or Convertible Securities is reduced over time or on the occurrence or non-occurrence of specified events other than by reason of antidilution adjustments, the Effective Price shall be recalculated using the figure to which such minimum amount of consideration is reduced; *provided, further* that if the minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities is subsequently increased, the Effective Price shall be again recalculated using the increased minimum amount of consideration payable to the Company upon the exercise or conversion of such rights, options or Convertible Securities. No further adjustment of the Series Preferred Conversion Price, as adjusted upon the issuance of such rights, options or Convertible Securities, shall be made as a result of the actual issuance of Additional Shares of Common Stock on the exercise of any such rights or options or the conversion of any such Convertible Securities. If any such rights or options or the conversion privilege represented by any such Convertible Securities shall expire without having been exercised, the Series Preferred Conversion Price as adjusted upon the issuance of such rights, options or Convertible Securities shall be readjusted to the Series Preferred Conversion Price which would have been in effect had an adjustment been made on the basis that the only Additional Shares of Common Stock so issued were the Additional Shares of Common Stock, if any, actually issued

or sold on the exercise of such rights or options or rights of conversion of such Convertible Securities, and such Additional Shares of Common Stock, if any, were issued or sold for the consideration actually received by the Company upon such exercise, 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 the Convertible Securities actually converted, 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 of such Convertible Securities, *provided* that such readjustment shall not apply to prior conversions of Series Preferred.

(iv) "Additional Shares of Common Stock" shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i), other than:

(A) shares of Common Stock issued upon conversion of the Series Preferred;

(B) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights after the Original Issue Date to employees, officers or directors of, or consultants or advisors to the Company or any subsidiary pursuant to stock purchase or stock option plans or other arrangements approved by the Board;

(C) shares of Common Stock issued pursuant to the exercise of options, warrants or convertible securities outstanding as of the Original Issue Date;

(D) shares of Common Stock issued in connection with any stock split, stock dividend or recapitalization by the Company;

(E) shares of Common Stock and/or options, warrants or other Common Stock purchase rights, and the Common Stock issued pursuant to such options, warrants or other rights issued for consideration other than cash pursuant to a merger, consolidation, acquisition or similar business combination approved by the Board;

(F) shares of Common Stock issued pursuant to any real estate or equipment leasing arrangement, or debt financing from a bank or similar financial institution approved by the Board;

(G) shares of Series Preferred issued under the Purchase Agreement;  
and

(H) any shares of Common Stock issued in connection with a registration statement filed under the Securities Act of 1933, as amended; *provided, however*, that the total number of such shares of Common Stock issued or issuable pursuant to clause (B) shall not exceed 3,889,000 shares and pursuant to clauses (E) and (F) shall not exceed 2,000,000 shares in the aggregate (as adjusted for any stock dividends, combinations, splits, recapitalizations and the like) at any time after the Original Issue Date.

References to Common Stock in the subsections of this clause (iv) above shall mean all shares of Common Stock issued by the Company or deemed to be issued pursuant to this Section 4(i). 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 under this Section 4(i), into the aggregate consideration received, or deemed to have been received by the Company for such issue under this Section 4(i), for such Additional Shares of Common Stock.

**j. Certificate of Adjustment.** In each case of an adjustment or readjustment of the Series Preferred Conversion Price for the number of shares of Common Stock or other securities issuable upon conversion of the Series Preferred, if the Series Preferred is then convertible pursuant to this Section 4, 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 Preferred 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 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 Preferred.

**k. 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 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, or any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Series Preferred at least 10 days prior to the record date specified therein (or such shorter period approved by a majority of the outstanding Series Preferred) 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.

**l. Automatic Conversion.**

(i) Each share of Series Preferred shall automatically be converted into shares of Common Stock, based on the then-effective Series Preferred Conversion Price, (A) at any time upon the affirmative election of the holders of at least a majority of the outstanding shares of the Series Preferred voting as a single class, or (B) immediately upon the closing of 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 the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at

least \$15,000,000. Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

(ii) **Special Mandatory Conversion.** Notwithstanding anything contained herein to the contrary, if: (A) the Company shall, after the Original Issue Date, deliver written notice (the "**Final Closing Notice**") to the holders of Series A-2 Preferred (the "**Series A-2 Holders**") informing them of the Company's intent to sell up to 5,228,098 additional shares of Series A-2 Preferred to such Series A-2 Holders at a purchase price equal to the Series A-2 Original Issue Price per share (or an aggregate purchase price of up to \$3,764,232) (the "**Final Closing Shares**"), which Final Closing Notice shall set forth: (1) the number of Final Closing Shares that the Company proposes to sell to each Series A-2 Holder as determined under that certain Series A-1 and Series A2 Preferred Stock Purchase Agreement (the "**Purchase Agreement**") dated on or around March 10, 2004 originally by and among the Company and the Series A-2 Holders (for each Series A-2 Holder, its "**Pro Rata Portion**") and (2) the proposed closing date of such sale (the "**Final Closing Date**"); and (B) any Series A-2 Holder does not acquire at least its Pro Rata Portion of the Final Closing Shares as required by and in accordance with the terms of the Purchase Agreement (a "**Non-Participating Holder**"), then each share of Series Preferred, as well as each share of Series Preferred underlying any warrants or convertible or derivative securities held by each Non-Participating Holder (or any transferee of such Non-Participating Holder) shall automatically, and without further action on the part of such Non-Participating Holder (or any transferee), be converted into the right to receive that number of shares of Common Stock into which such share of Series Preferred is convertible, effective as of the date immediately preceding the Final Closing Date (the "**Mandatory Conversion**"). The conversion and cancellation of any shares of Preferred Stock in connection with a Mandatory Conversion shall be the sole remedy available to the Company against any Non-Participating Holder in law or equity, in accordance with the provisions of the Purchase Agreement. Any purchases by any affiliate of a Series A-2 Holder shall be deemed to be a purchase by such Series A-2 Holder for purposes of determining whether such Series A-2 Holder has purchased at least its Pro Rata Portion of the Final Closing Shares in satisfaction of this 4(I)(ii).

(iii) Upon the occurrence of any of the events specified in Sections 4(I)(i) or 4(I)(ii) above, the outstanding shares of Series Preferred 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 Preferred 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 Preferred, the holders of Series Preferred shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Series Preferred. 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 Preferred surrendered were convertible on the date on which such automatic conversion occurred, and any declared and unpaid dividends shall be paid in accordance with the provisions of Section 4(d).

m. **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of Series Preferred. All shares of Common Stock (including fractions thereof)

issuable upon conversion of more than one share of Series Preferred 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.

**n. 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 Preferred, 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 Preferred. 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 Preferred, the Company 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.

**o. Notices.** Any notice required by the provisions of this Section 4 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 telex or facsimile if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written 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.

**p. 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 Preferred, 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 name other than that in which the shares of Series Preferred so converted were registered.

**q. No Dilution or Impairment.** Without the consent of the holders of then outstanding Series Preferred as required under Section 2, the Company shall not amend its Restated Certificate of Incorporation or participate in any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or take any other voluntary action, for the purpose of avoiding or seeking 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 action as may be reasonably necessary or appropriate in order to protect the conversion rights of the holders of the Series Preferred against dilution or other impairment.

## **5. REDEMPTION.**

**a.** The Company shall be obligated to redeem the Series Preferred as follows:

**(i)** The holders of: (1) during the Standstill Period, at least 75% of the then outstanding shares of Series Preferred, voting together as a separate class; and (2) after

the expiration of the Standstill Period, at least a majority of the then outstanding shares of Series Preferred, voting together as a separate class, may require the Company, to the extent it may lawfully do so, to redeem the Series Preferred in three equal annual installments beginning on any date following the fifth anniversary of the Original Issue Date, and ending on the date two years from such first redemption date (each a "**Redemption Date**"); *provided, however*, that the Company shall receive written notice at least 90 days prior to the initial Redemption Date of the election to redeem by the holders of the Series Preferred. The Company shall effect such redemptions on the applicable Redemption Date by paying in cash in exchange for the shares of Series Preferred to be redeemed as follows:

(A) with respect to the Series A-2 Preferred, an amount equal to the Series A-2 Original Issue Price per share of Series A-2 Preferred, plus declared and unpaid dividends with respect to such shares (the "**Series A-2 Redemption Price**"); and

(B) with respect to the Series A-1 Preferred, an amount equal to the Series A-1 Original Issue Price per share of Series A-1 Preferred, plus declared and unpaid dividends with respect to such shares (the "**Series A-1 Redemption Price**").

Otherwise unqualified references to the "**Redemption Price**" of the Series Preferred shall mean the Series A-2 Redemption Price and/or the Series A-1 Redemption Price, as the context requires. The "**Redemption Amount**" of the Series Preferred shall mean the aggregate Series A-2 Redemption Price and/or the aggregate Series A-1 Redemption Price for all shares of Series A-2 Preferred and/or Series A-1 Preferred subject to redemption on a given Redemption Date, as the context requires.

(ii) The number of shares of Series Preferred that the Company shall be required to redeem on any one Redemption Date shall be as follows:

(A) with respect to the Series A-2 Preferred, the amount determined by dividing (A) the aggregate number of shares of Series A-2 Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies).

(B) with respect to the Series A-1 Preferred, the amount determined by dividing (A) the aggregate number of shares of Series A-1 Preferred outstanding immediately prior to the Redemption Date by (B) the number of remaining Redemption Dates (including the Redemption Date to which such calculation applies).

(iii) At least 30 days but no more than 60 days prior to the first Redemption Date, the Company shall send a notice (a "**Redemption Notice**") to all holders of Series Preferred to be redeemed setting forth (A) the Redemption Price for the shares to be redeemed; and (B) the place at which such holders may obtain payment of the Redemption Price upon surrender of their share certificates. If, on any Redemption Date, the Company shall have insufficient assets to make payment in full of the Redemption Amount due on such Redemption Date to all holders of Series Preferred, then the assets available for such payment (if any) shall be distributed among the holders of Series Preferred at the time outstanding, ratably in proportion to the full amounts to which they would otherwise be respectively entitled to receive, and any unpaid portion of such Redemption Amount shall accrue interest at a rate of 1% per month (commencing on the Redemption Date) until paid.

b. On or prior to each Redemption Date, the Company shall deposit the Redemption Amount of all shares to be redeemed on such Redemption Date with a bank or trust company having aggregate capital and surplus in excess of \$100,000,000, as a trust fund, with irrevocable instructions and authority to the bank or trust company to pay, on and after such Redemption Date, the Redemption Price of the shares to their respective holders upon the surrender of their share certificates. Any moneys deposited by the Company pursuant to this Section 5(b) for the redemption of shares thereafter converted into shares of Common Stock pursuant to Section 4 hereof no later than the fifth day preceding the Redemption Date shall be returned to the Company forthwith upon such conversion.

c. On each Redemption Date (or promptly thereafter), each holder of shares of Series Preferred to be redeemed shall surrender such holder's certificates representing such shares to the Company in the manner and at the place designated in the Redemption Notice, and thereupon the Redemption Price of such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof and each surrendered certificate shall be canceled. In the event less than all the shares represented by such certificates are redeemed, a new certificate shall be issued representing the unredeemed shares. From and after such Redemption Date, unless there shall have been a default in payment of the Redemption Price or the Company is unable to pay the Redemption Price due to not having sufficient legally available funds, all rights of the holder of such shares as holder of Series Preferred (except the right to receive the Redemption Price upon surrender of their certificates), shall cease and terminate with respect to such shares; *provided, however*, that in the event that shares of Series Preferred are not redeemed due to a default in payment by the Company or because the Company does not have sufficient legally available funds, such shares of Series Preferred shall remain outstanding and shall be entitled to all of the rights and preferences provided herein.

d. In the event of a call for redemption of any shares of Series Preferred, the Conversion Rights (as defined in Section 4) for such Series Preferred shall terminate as to the shares designated for redemption at the close of business on the fifth day preceding the Redemption Date, unless default is made in payment of the Redemption Price.

#### **6. NO REISSUANCE OF SERIES PREFERRED.**

No share or shares of Series Preferred acquired by the Company by reason of redemption, purchase, conversion or otherwise shall be reissued.

#### **7. NO PREEMPTIVE RIGHTS.**

Stockholders shall have no preemptive rights except as granted by the Company pursuant to written agreements.

### **V.**

A. The liability of the directors for monetary damages shall be eliminated to the fullest extent under applicable law.

B. This corporation is authorized to provide indemnification of agents (as defined in Section 317 of the CGCL) for breach of duty to the corporation and its shareholders through bylaw provisions or through agreements with the agents, or through shareholder resolutions, or otherwise, in excess of the indemnification otherwise permitted by Section 317 of the CGCL, subject, at any time or



times that the corporation is subject to Section 2115(b) of the CGCL, to the limits on such excess indemnification set forth in Section 204 of the CGCL.

C. The holders of the Series Preferred expressly waive their rights, if any, as described in California Code Sections 502, 503 and 506 as they relate to repurchases of shares upon termination of employment or service as a consultant or director.

D. Any repeal or modification of this Article V shall only be prospective and shall not effect the rights under this Article V in effect at the time of the alleged occurrence of any action or omission to act giving rise to liability.

## VI.

For the management of the business and for the conduct of the affairs of the Company, and in further definition, limitation and regulation of the powers of the Company, of its directors and of its stockholders or any class thereof, as the case may be, it is further provided that:

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board of Directors. The number of directors which shall constitute the whole Board of Directors shall be fixed at five directors.

B. Subject to the indemnification provisions in the Bylaws, the Board of Directors may from time to time make, amend, supplement or repeal the Bylaws; *provided, however*, that the stockholders may change or repeal any Bylaw adopted by the Board of Directors by the affirmative vote of the percentage of holders of capital stock as provided therein; and, provided further, that no amendment or supplement to the Bylaws adopted by the Board of Directors shall vary or conflict with any amendment or supplement thus adopted by the stockholders.

C. The directors of the Company need not be elected by written ballot unless the Bylaws so provide.

\* \* \* \*

**FOUR:** This Eighth Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of the Company.

**FIVE:** This Eighth Amended Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 228, 242 and 245 of the General Company Law of the State of Delaware by the Board of Directors and the stockholders of the Company. The total number of outstanding shares entitled to vote or act by written consent was 10,553,151 shares of Common Stock. A majority of the outstanding shares of Common Stock approved this Eighth Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Company Law of the State of Delaware and written notice of such was given by the Company in accordance with said Section 228.

IN WITNESS WHEREOF, ASTORIA SOFTWARE, INC. has caused this Eighth Amended and Restated Certificate of Incorporation to be signed by the President and the Secretary in San Francisco, California this 10th day of March, 2004.

ASTORIA SOFTWARE, INC.

By: /s/ Thomas Steding  
President

Attest:

By: /s/ Michael J. Sullivan  
Secretary