



Brillouin
Energy

CERTIFICATE OF DESIGNATION

SERIES D CONVERTIBLE PREFERRED STOCK
(\$.00001 Par Value)

Pursuant to Section 151 of the General Corporation Law

Brillouin Energy Corp., a corporation organized and existing under the laws of the State of Delaware (the "Corporation" or the "Company"), HEREBY CERTIFIES that the following resolution was duly adopted by the Board of Directors (the "Board of Directors") of the Corporation in accordance with Section 151(g) of the General Corporation Law of the State of Delaware pursuant to the authority conferred upon the Board of Directors by the provisions of the Certificate of Incorporation of the Corporation:

WHEREAS, the Corporation owns certain technical information, processes, procedures, designs, schematics, works of authorship, inventions and discoveries related to controlled electron capture reaction (CECR) technology including designs and developments relating to the manufacture and sale of products, including related trade secrets, know-how and intellectual property rights thereto;

WHEREAS, the Corporation has nominated BEC Ltd., an Exempted Company incorporated in the Cayman Islands with Limited Liability ("BEC Ltd."), to operate a public sale of securities, with the characteristics described below (the "BEC Securities"), the proceeds of which will be used to support the development and commercialization of Company Intellectual Property (as defined below);

WHEREAS, In consideration for managing the sale of BEC Securities and to provide prospective value for the BEC Securities, the Corporation has agreed to provide to BEC Ltd. a percentage of Company Net Profits (as defined below) generated from the exploitation of its intellectual property and its operations; and

WHEREAS, payment of Company Net Profits to BEC Ltd. shall be accomplished through the sale and issuance to BEC Ltd. of a new series of preferred stock of the Corporation, designated as Series D Convertible Preferred Stock, and that the Corporation shall only issue this new class of preferred stock to BEC Ltd. and to no other person.

RESOLVED, that the issuance of a series of preferred stock, par value \$0.00001 per share, of the Corporation shall consist of 1,000,000 shares of Series D Convertible Preferred Stock be, and the same hereby is, authorized; and the President, Chief Executive Officer, Secretary, or any proper officer of the Corporation be, and hereby is, authorized and directed to execute and file with the Secretary of State of the State of Delaware a Certificate of Designation of Series D Convertible Preferred Stock of the Corporation fixing the designations, powers, preferences and rights of the shares of such series, and the qualifications, limitations or restrictions thereof (in addition to the designations, powers, preferences and rights, and the qualifications, limitations or restrictions thereof, set forth in the Certificate of Incorporation which may be applicable to the Corporation's preferred stock), as follows:

1. Designation.

A Series of Preferred Stock is hereby designated and known as Series D Convertible Preferred Stock (the "Series D Preferred Stock"). The rights, preferences and limitations of the Series D Preferred Stock shall be as set forth in the provisions hereof.

2. Number of Shares.

The number of shares of Series D Preferred Stock shall be One Million (1,000,000) (the "Shares"), which number from time to time may be increased or decreased (but not decreased below the number of Shares of the Series then outstanding) by the Board of Directors, in accordance with and subject to the Corporation's Certificate of Incorporation. Series D Preferred Stock purchased by the Corporation shall be canceled and shall revert to authorized but unissued Preferred Stock undesignated as to Series.

3. Definitions.

The following terms are used in this Certificate of Designation, as defined below:

"Acquisition" means, other than a Dissolution Event, (i) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (ii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"Applicable Conversion Ratio" has the meaning given in Section 7(b).

"Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of California generally are authorized or required by law or other governmental actions to close.

"Commercialization Date" means the date on which the Company notifies BEC Ltd. that, in its reasonable opinion, the Company Technology is ready for commercialization throughout the world.

"Company Capitalization" has the meaning given in Section 7(c).

"Company Net Profits" means the profits of the Company in respect of Company Products Sold by the Company or royalties received pursuant to any license or sublicense of the Company Technology, after provision for taxes, prior to and in preference of any outstanding class of capital stock of the Company, calculated applying reasonable costs and expenses for similarly situated businesses and in accordance with Generally Accepted Accounting Principles (GAAP), as determined by the U.S. Financial Accounting Standards Board from time to time.

"Company Products" means any service, function, feature, material, design, know-how, invention, method or product through which the Company Technology is commercialized.

"Company Technology" means:

- (i) technical information, processes, procedures, designs, schematics, works of authorship, inventions and discoveries related to controlled electron capture reaction (CECR) technology, current and to be developed,

- (ii) designs and developments relating to the manufacture and sale of products which adopt any or all of the items described in clause (i), current and to be developed,
- (iii) Derivatives of the items that are described in clauses (i) and (ii) (current or to be developed) or which are otherwise exclusively owned by or licensed to the Company and subject to intellectual property protection,
- (iv) any Intellectual Property Rights pertaining to the items described in clauses (i) to (iii), and
- (v) all improvements, updates and variations to the items described in clauses (i) to (iv) howsoever arising.

"Derivative" means all "derivative works," as defined in the copyright law of the United States.

"Dissolution Event" means (i) a voluntary termination of the Company's operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (excluding an Acquisition Event), whether voluntary or involuntary.

"Dividend Payment Date" means May 30 of each year.

"Dividend Period" has the meaning set forth in Section 4(a).

"Dividend Record Date" has the meaning set forth in Section 4(a).

"Intellectual Property Rights" means all worldwide: (i) Patents, Patent applications and other Patent rights; (ii) rights associated with works of authorship, including copyrights, copyright applications, copyright restrictions, mask work rights, mask work applications and mask work registrations; (iii) rights relating to the protection of trade secrets and confidential information; (iv) trademarks, including the Licensed Marks, and (iv) rights analogous to those set forth herein and any other proprietary rights relating to intangible property

"Junior Stock" means the Common Stock, and any other class or series of stock of the Corporation the terms of which expressly provide that it ranks junior to Series D Preferred Stock as to dividend rights including, but not limited to, the Corporation's Series A Preferred Stock, Series B Preferred Stock and Series C Preferred Stock.

"Liquidating Distribution Amount" of the Series D Preferred Stock means [the Share Price] per share of Series D Preferred Stock.

"Net Profits Distribution Amount" means the percentage of Company Net Profits to be distributed to BEC Ltd. from time to time as set forth in Section 4(a).

"Patent" means any issued letters patent disclosing and claiming the Company Technology, including a reissued patent, a patent issuing from a continuation application, divisional application or continuation-in-part application (to the extent that the claimed subject matter of

such continuation-in-part is disclosed and enabled in the parent Patent), and any corresponding foreign patent application relating thereto.

"Sales", "Sell", or "Sold" means any sale, transfer, lease, license, use, permission to use, or other transfer of the right of possession or other conveyance by the Company or any Company licensee.

"Share Price" means \$100.00 or the total value raised from the sale of Series D Preferred Stock divided by 1,000,000, whichever is greater.

4. Dividends.

(a) Rate.

Holders of Series D Preferred Stock shall be entitled to receive, on each share of Series D Preferred Stock, but only out of assets legally available therefor, cash dividends with respect to each Dividend Period (as defined below) equal to the Net Profits Distribution Amount. Such dividends shall begin to accrue from and after the Commercialization Date and shall be payable annually in arrears on each Dividend Payment Date, commencing with the first such Dividend Payment Date to occur after the Commercialization Date. In the event that any Dividend Payment Date would otherwise fall on a day that is not a Business Day, the dividend payment due on that date will be postponed to the next day that is a Business Day. The period from and including any Dividend Payment Date to, but excluding, the next Dividend Payment Date is a "Dividend Period", provided that the initial Dividend Period shall be the period from and including the Commercialization Date to, but excluding, the next Dividend Payment Date. On or before the date which is ninety (90) days after the end of the calendar year in which the Commercialization Date occurs, and ninety (90) days after the end of each calendar year thereafter, the Company shall distribute to BEC Ltd. (the "Net Profits Distribution Amount"), assuming all One Million (1,000,000) Shares are sold and issued to BEC Ltd.:

- Twenty percent (20%) of Company Net Profits, until the total dollar amount of Company Net Profits distributed to BEC Ltd. equals five times (5X) the total dollar amount of proceeds received by the Company from the sale of Series D Preferred Stock to BEC Ltd. ("First Phase"), and thereafter;
- Ten percent (10%) of Company Net Profits, until the total dollar amount of Company Net Profits distributed to BEC Ltd. equals the ten times (10X) the total dollar amount of proceeds received by the Company from the sale of Series D Preferred Stock to BEC Ltd. ("Second Phase"), and thereafter;
- Five percent (5%) of Company Net Profits ("Third Phase").

In the event all One Million (1,000,000) Shares are not purchased by BEC Ltd., the Net Profits Distribution Amount shall be reduced pro rata.

Dividends that are payable on Series D Preferred Stock on any Dividend Payment Date will be payable to holders of record of Series D Preferred Stock as they appear on the stock register of the Corporation on the applicable record date, which shall be the 15th calendar day

immediately preceding such Dividend Payment Date or such other record date fixed by the Board of Directors or any duly authorized committee of the Board of Directors that is not more than 60 nor less than 10 days prior to such Dividend Payment Date (each, a "Dividend Record Date"). Any such day that is a Dividend Record Date shall be a Dividend Record Date whether or not such day is a Business Day.

Holders of Series D Preferred Stock shall not be entitled to any dividends, whether payable in cash, securities or other property, other than dividends (if any) declared and payable on Series D Preferred Stock as specified in this Section 4 (subject to the other provisions of the Certificate of Designations).

(b) Priority of Dividends.

So long as any share of Series D Preferred Stock remains outstanding, no dividend or distribution shall be declared or paid on the Common Stock or any other shares of Junior Stock (other than dividends payable solely in shares of Common Stock), and no Common Stock or Junior Stock shall be, directly or indirectly, purchased, redeemed or otherwise acquired for consideration by the Corporation or any of its subsidiaries unless all accrued and unpaid dividends for all past Dividend Periods, including the latest completed Dividend Period, on all outstanding shares of Series D Preferred Stock have been or are contemporaneously declared and paid in full (or have been declared and a sum sufficient for the payment thereof has been set aside for the benefit of the holders of shares of Series D Preferred Stock on the applicable record date).

Subject to the foregoing, and not otherwise, such dividends (payable in cash, securities or other property) as may be determined by the Board of Directors or any duly authorized committee of the Board of Directors may be declared and paid on any securities, including Common Stock and other Junior Stock, from time to time out of any funds legally available for such payment, and holders of Series D Preferred Stock shall not be entitled to participate in any such dividends.

5. Dissolution Preference.

(a)

On the occurrence of a Dissolution Event, before any payment or distribution of the assets of the Corporation, or proceeds thereof, shall be made to or set apart for the holders of the Common Stock and outstanding series of Preferred Stock (and subject to the rights of Series of Preferred Stock that may from time to time come into existence), the holders of Series D Preferred Stock shall be entitled to receive an amount equal to [the Share Price] (the "Dissolution Distribution Amount" of Series D Preferred Stock).

(b)

If, upon any Dissolution, the assets of the Corporation, or proceeds thereof, shall be insufficient to pay the full Liquidating Distribution Amount of Series D Preferred Stock to all holders of Series D Preferred Stock, then, subject to the rights of Series of Preferred Stock that may from time to time come into existence, such assets, or the proceeds thereof, shall be divided and distributed among the holders of the Corporation's capital stock in accordance with following order of priority:

(i) First, to the extent that the provisions of any Series of Preferred Stock that may from

time to time come into existence provide for a priority of any Series of Preferred Stock (each Series possessing such priority, a "Dissolution Senior Series") over other Series (i) of Preferred Stock with respect to distributions made in connection with a Distribution, to stockholders then holding Preferred Stock of such Dissolution Senior Series (and if there is outstanding at such time more than one Dissolution Senior Series, then to stockholders then holding Preferred Stock of any Dissolution Senior Series, in the relative order of priority specified herein with respect to each such Dissolution Senior Series), in each case in proportion to the aggregate Dissolution Distribution Amounts of the Preferred Stock of such Dissolution Senior Series then held by each such stockholder, until each such stockholder has received, with respect to Preferred Stock of each such Dissolution Senior Series then held by such stockholder, an amount equal to the aggregate Dissolution Distribution Amounts of all Preferred Stock of such Dissolution Senior Series then held by such stockholder (provided, for the avoidance of doubt, that if the remaining net assets of the Corporation to be distributed to the stockholders are insufficient to permit payment in full of all amounts required to be distributed to holders of Preferred Stock of Distribution Senior Series as provided in this clause (i), then the entire such remaining net assets of the Corporation shall be distributed in accordance with this clause (i), and no such assets shall be distributed pursuant to clause (ii) or (iii) of this Section 5(b);

(ii) Second, to stockholders then holding Preferred Stock of each Series that is not a Dissolution Senior Series (each such Series, a "Dissolution Junior Series"), in proportion to the aggregate Liquidating Distribution Amounts of the Preferred Stock of each Dissolution Junior Series then held by each such stockholder, until each such stockholder has received, with respect to Preferred Stock of any Dissolution Junior Series then held by such stockholder, an amount equal to the aggregate Dissolution Distribution Amounts of all Preferred Stock of any Dissolution Junior Series then held by such stockholder (provided, for the avoidance of doubt, that if the remaining net assets of the Corporation to be distributed to the stockholders as set forth in this Section 5(b) are insufficient to permit payment in full of all amounts required to be distributed to holders of Preferred Stock of Dissolution Senior Series as provided in clause (i) of this Section 5(b) and to holders of Preferred Stock of Dissolution Junior Series as provided in this clause (ii), then the entire such remaining net assets of the Corporation shall be distributed in accordance with clauses (i) and (ii) of this Section 5(b), and no such assets shall be distributed pursuant to clause (iii) of this Section 5(b))(for the avoidance of doubt, as of the date of the filing of this Certificate of Designation, the Corporation's Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock and Series D Preferred Stock are each Dissolution Junior Series and shall receive distributions pursuant to this clause 5(b)(ii) on a pari passu basis); and

(iii) Thereafter, to stockholders then holding Common Stock and Preferred Stock (if any) entitled hereunder to participate with Common Stock in the distribution, in connection with dissolution of the Corporation, of the remaining net assets of the Corporation, in proportion to their respective holdings of such stock (regardless of class or Series) or as may be otherwise provided herein (including in the terms of any Series of Preferred Stock); provided, however, that, prior to the making of any distribution pursuant to this Section 5(b), each holder of stock of any class and, if applicable, Series entitled, at the

time of such distribution, to conversion rights hereunder shall be given not less than 15 days' prior written notice of such distribution.

6. Acquisition Preference.

On the occurrence of an Acquisition, the holders of Series D Preferred shall be entitled to receive, in exchange for their Series D Preferred, the greater of:

(I) the Series D Dissolution Preference, or

(II)

(a) during the First Phase, twenty percent (20%) of the total of all cash, stock or other assets to be provided to all security holders in the Acquisition (the "Total Acquisition Consideration");

(b) during the Second Phase, ten percent (10%) of the Total Acquisition Consideration; and

(c) during the Third Phase, five percent (5%) of the Total Acquisition Consideration.

7. Conversion.

The Series D Preferred Stock shall convert as follows:

(a) Voluntary Conversion.

The holders of Series D Preferred Stock shall have the right to convert the Series D Preferred Stock, at any time, into shares of Common Stock at the Applicable Conversion Ratio (as defined below).

(b) Applicable Conversion Ratio.

In the event of a conversion of the Series D Preferred Stock into Common Stock, the applicable conversion ratio (the "Applicable Conversion Ratio") shall be: (A) if the conversion occurs during the First Phase, the conversion will result in the holders owning twenty percent (20%) of the Company Capitalization, (B) if the conversion occurs during the Second Phase, the conversion will result in the holders owning ten percent (10%) of the Company Capitalization, and (C) if the conversion occurs during the Third Phase, the conversion will result in the holders owning five percent (5%) of the Company Capitalization.

(c) Company Capitalization.

"Company Capitalization" means the sum, as of immediately prior to the Conversion, of: all shares of capital stock (on an as-converted basis) issued and outstanding, assuming exercise or conversion of all outstanding vested options, warrants and other convertible securities, but excluding the Series D Preferred.

(d) Mechanics of Conversion.

No fractional share of Common Stock shall be issued upon conversion of Series D Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of such fractional share as determined in good faith by the Board of Directors upon approval by the Board of Directors (as evidenced by certified resolutions thereof). For such purpose, all Series D Preferred Stock held by each holder shall be aggregated, and any resulting fractional Common Stock shall be paid in cash. The Corporation will not issue certificates. Shares of Series

D Preferred Stock will be held in “un-certificated” form which will (a) eliminate the physical handling and safekeeping responsibilities inherent in owning transferable stock certificates, and (b) eliminate the need to return a duly executed stock certificate to the transfer agent to effect a transfer. Upon the issuance of its shares of Series D Preferred Stock, the Corporation shall send to each stockholder a written statement, which will include all information required on stock certificates under Delaware law. Transfers and conversions into Common Stock shall be affected by mailing a duly executed stock power to the Corporation.

(e) Reservation of Common Stock Issuable Upon Conversion; Adjustment to Conversion Ratio.

The Corporation shall at all times reserve and keep available out of its authorized but unissued Common Stock, solely for the purpose of effecting the conversion of Series D Preferred Stock, such number of its Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Series D Preferred Stock. The conversion ratio set forth in Section 7(a) above shall be equitably adjusted for any stock splits, combinations, reorganizations or other recapitalizations or similar actions with respect to the Corporation's Common Stock.

8. Voting Rights.

Except as required by law, the holders of Series D Preferred Stock will not have voting rights. If for any reason holders of Series D Preferred Stock shall be entitled to vote as a separate class, the holders of a majority of Series D Preferred Stock entitled to vote shall bind the entire class of Series D Preferred Stock.

9. Redemption.

The Series D Preferred Stock shall not be redeemable.