

# Delaware

The First State

Page 1

*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE RESTATED CERTIFICATE OF "AUMNI, INC.", FILED IN  
THIS OFFICE ON THE NINETEENTH DAY OF AUGUST, A.D. 2021, AT 2:22  
O`CLOCK P.M.*



A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

6690483 8100  
SR# 20213026640

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

Authentication: 203961819  
Date: 08-19-21

AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AUMNI, INC.

(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)

Aumni, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware (the “**General Corporation Law**”),

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Aumni, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on January 2, 2018 under the name LinkLegal, Inc.

2. That this corporation filed an Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware on February 14, 2020 (as amended, the “**Amended and Restated Certificate of Incorporation**”).

3. That the Board of Directors duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation of this corporation, declaring said amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed amendment and restatement is as follows:

**RESOLVED**, that the Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

**FIRST:** The name of this corporation is Aumni, Inc. (the “**Corporation**”).

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 1012 College Road, Ste 201, 19904 in the City of Dover, County of Kent. The name of its registered agent at such address is Telos Legal Corp.

**THIRD:** 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.

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 89,842,738 shares of Common Stock, \$0.00001 par value per share (“**Common Stock**”), (ii) 14,367,172 shares of Non-Voting Common Stock, \$0.00001 par value per share (“**Non-Voting Common Stock**”), and (iii) 48,980,202 shares of Preferred Stock, \$0.00001 par value per share (“**Preferred Stock**”).

The following is a statement of the designations and the powers, privileges and rights, and the qualifications, limitations or restrictions thereof in respect of each class of capital stock of the Corporation.

A. COMMON STOCK AND NON-VOTING COMMON STOCK

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock and Non-Voting Common Stock are subject to and qualified by the rights, powers and preferences of

the holders of the Preferred Stock set forth herein. The shares of Common Stock and Non-Voting Common Stock shall have identical rights, preferences, privileges and restrictions in every respect, except as expressly set forth in this Part of this Article Fourth.

2. Voting. The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock, if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock and/or Non-Voting Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law. Except (a) for any matters on which the vote of the holders of Non-Voting Common Stock as a separate class or series is required under the General Corporation Law or other applicable law, and (b) as and to the extent otherwise expressly set forth in this Amended and Restated Certificate of Incorporation (the matters contemplated by the foregoing clauses (a) and (b), collectively, the “**Permitted Common Voting Matters**”), each holder of outstanding shares of Non-Voting Common Stock shall have no right to vote in respect of any share of Non-Voting Common Stock held by such holder. Except with regards to the Permitted Common Voting Matters, (i) the Non-Voting Common Stock shall not vote together with the holders of Common Stock as a single class, (ii) the Non-Voting Common Stock shall not vote together with the holders of Preferred Stock as a single class on an as-converted basis and (iii) the Non-Voting Common Stock shall not be considered capital stock that is entitled to vote on any matter presented to the stockholders of this Corporation. With regard to the Permitted Common Voting Matters, the holders of Non-Voting Common Stock shall be entitled to vote with the holders of the Common Stock, voting together as a single class, and with each share of Non-Voting Common Stock entitled to one vote per share of Non-Voting Common Stock.

## B. PREFERRED STOCK

As of the effective date of this Amended and Restated Certificate of Incorporation, 3,753,386 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series Seed 1 Preferred Stock**”, 2,182,475 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series Seed 2 Preferred Stock**”, 3,467,560 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series Seed 3 Preferred Stock**” (the Series Seed 1 Preferred Stock, the Series Seed 2 Preferred Stock and the Series Seed 3 Preferred Stock, collectively, the “**Series Seed Preferred Stock**”), 13,651,129 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series A Voting Preferred Stock**”, 6,300,535 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series A Non-Voting Preferred Stock**” (the Series A Voting Preferred Stock and the Series A Non-Voting Preferred Stock, collectively, the “**Series A Preferred Stock**”), 13,392,857 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series B Voting Preferred Stock**” (the Series Seed Preferred Stock, the Series A Voting Preferred Stock, and the Series B Voting Preferred Stock, collectively, the “**Voting Preferred Stock**”), and 6,232,260 shares of the authorized Preferred Stock of the Corporation are hereby designated “**Series B Non-Voting Preferred Stock**” (the Series B Voting Preferred Stock and the Series B Non-Voting Preferred Stock, collectively, the “**Series B Preferred Stock**”), with the following respective rights, preferences, powers, privileges and restrictions, qualifications

and limitations. The shares of Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock shall have identical rights, preferences, privileges and restrictions in every respect, except as expressly set forth in Part B of this Article Fourth. The shares of Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock shall have identical rights, preferences, privileges and restrictions in every respect, except as expressly set forth in this Part B of this Article Fourth. Unless otherwise indicated, references to “sections” or “subsections” in this Part B of this Article Fourth refer to sections and subsections of this Part B of this Article Fourth. The “**Non-Voting Preferred Stock**” shall mean the Series B Non-Voting Preferred Stock and the Series A Non-Voting Preferred Stock.

1. Dividends.

The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Amended and Restated Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount equal to a rate of six percent (6%) per annum of the applicable Original Issue Price for such series of Preferred Stock on each outstanding share of such series of Preferred Stock. The foregoing dividends shall not be cumulative and shall be paid when, as and if declared by the Board of Directors of the Corporation (the “**Board**”). For purposes of this Amended and Restated Certificate of Incorporation, the “**Original Issue Price**” shall mean, as applicable to shares of Series Seed 1 Preferred Stock, the Series Seed 1 Original Issue Price; as applicable to shares of Series Seed 2 Preferred Stock, the Series Seed 2 Original Issue Price; as applicable to shares of Series Seed 3 Preferred Stock, the Series Seed 3 Original Issue Price; as applicable to shares of Series A Voting Preferred Stock, the Series A Voting Original Issue Price; as applicable to shares of Series A Non-Voting Preferred Stock, the Series A Non-Voting Original Issue Price; as applicable to shares of Series B Voting Preferred Stock, the Series B Voting Original Issue Price; as applicable to shares of Series B Non-Voting Preferred Stock, the Series B Non-Voting Original Issue Price. The “**Series Seed 1 Original Issue Price**” shall mean \$0.4063 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed 1 Preferred Stock. The “**Series Seed 2 Original Issue Price**” shall mean \$0.3047 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed 2 Preferred Stock. The “**Series Seed 3 Original Issue Price**” shall mean \$0.4470 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series Seed 3 Preferred Stock. The “**Series A Voting Original Issue Price**” shall mean \$0.9523 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Voting Preferred Stock. The “**Series A Non-Voting Original Issue Price**” shall mean \$0.9523 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Non-Voting Preferred Stock. The “**Series B Voting Original Issue Price**” shall mean \$3.92 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Voting Preferred Stock. The “**Series B Non-Voting Original Issue Price**” shall mean \$3.92 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Non-Voting Preferred Stock.

2. Liquidation, Dissolution or Winding Up; Certain Mergers, Consolidations and Asset Sales.

2.1 **Preferential Payments to Holders of Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock, Series A Preferred Stock, Series Seed 1 Preferred Stock, Series Seed 2 Preferred Stock and Series Seed 3 Preferred Stock shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event (as defined below), the holders of shares of Series B Preferred Stock, Series A Preferred Stock, Series Seed 1 Preferred Stock, Series Seed 2 Preferred Stock and Series Seed 3 Preferred Stock shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event, on a *pari passu* basis and prior and in preference to any payment to the holders of the Common Stock, by reason of their ownership thereof, an amount per share of Series B Voting Preferred Stock equal to the Series B Voting Liquidation Amount (as defined below), an amount per share of Series B Non-Voting Preferred Stock equal to the Series B Non-Voting Liquidation Amount (as defined below), an amount per share of Series A Voting Preferred Stock equal to the Series A Voting Liquidation Amount (as defined below), an amount per share of Series A Non-Voting Preferred Stock equal to the Series A Non-Voting Liquidation Amount (as defined below), an amount per share of Series Seed 1 Preferred Stock equal to the Series Seed 1 Liquidation Amount (as defined below), an amount per share of Series Seed 2 Preferred Stock equal to the Series Seed 2 Liquidation Amount (as defined below), and an amount per share of Series Seed 3 Preferred Stock equal to the Series Seed 3 Liquidation Amount (as defined below), in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the applicable series of Preferred Stock. If upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Preferred Stock shall share ratably on a *pari passu* basis in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full. As used herein:

(a) the “**Series B Voting Liquidation Amount**” shall equal an amount per share of Series B Voting Preferred Stock equal to the greater of (i) the Series B Voting Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series B Voting Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series B Voting Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(b) the “**Series B Non-Voting Liquidation Amount**” shall equal an amount per share of Series B Non-Voting Preferred Stock equal to the greater of (i) the Series B Non-Voting Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series B Non-Voting Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series B Non-Voting Preferred Stock been converted into Non-Voting Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(c) the “**Series A Voting Liquidation Amount**” shall equal an amount per share of Series A Voting Preferred Stock equal to the greater of (i) the Series A Voting Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series A Voting Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series A Voting Preferred Stock been

converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(d) the “**Series A Non-Voting Liquidation Amount**” shall equal an amount per share of Series A Non-Voting Preferred Stock equal to the greater of (i) the Series A Non-Voting Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series A Non-Voting Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series A Non-Voting Preferred Stock been converted into Non-Voting Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(e) the “**Series Seed 1 Liquidation Amount**” shall equal an amount per share of Series Seed 1 Preferred Stock equal to the greater of (i) the Series Seed 1 Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series Seed 1 Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series Seed 1 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(f) the “**Series Seed 2 Liquidation Amount**” shall equal an amount per share of Series Seed 2 Preferred Stock equal to the greater of (i) the Series Seed 2 Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series Seed 2 Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series Seed 2 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event;

(g) the “**Series Seed 3 Liquidation Amount**” shall equal an amount per share of Series Seed 3 Preferred Stock equal to the greater of (i) the Series Seed 3 Original Issue Price (as adjusted for stock splits, stock dividends, recapitalizations, and the like) plus all declared and unpaid dividends payable with respect to such share of Series Seed 3 Preferred Stock or (ii) such amount per share as would have been payable had all shares of Series Seed 3 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution or winding up or Deemed Liquidation Event; and

(h) “**Liquidation Amounts**” shall mean the Series B Voting Liquidation Amount, Series B Non-Voting Liquidation Amount, Series A Voting Liquidation Amount, Series A Non-Voting Liquidation Amount, Series Seed 1 Liquidation Amount, Series Seed 2 Liquidation Amount, and Series Seed 3 Liquidation Amount, collectively.

2.2 Payments to Holders of Common Stock and Non-Voting Common Stock.  
In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, after the payment in full of all Liquidation Amounts required to be paid to the holders of shares of Preferred Stock, the remaining assets of the Corporation available for distribution to its stockholders or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Preferred Stock pursuant to Section 2.1, as the case may be, shall be distributed among the holders of shares of Common Stock and Non-Voting Common Stock, pro rata based on the number of shares held by each such holder.

## 2.3 Deemed Liquidation Events.

2.3.1 Definition. Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of at least a majority of the outstanding shares of the Voting Preferred Stock, voting exclusively as a single class on an as-converted basis (the “**Requisite Holders**”) elect otherwise by written notice sent to the Corporation at least five (5) days prior to the effective date of any such event (a “**Deemed Liquidation Event Waiver**”); *provided that*, all outstanding shares of Non-Voting Preferred Stock shall be entitled to vote thereon and shall be counted for purposes of determining whether such requisite majority has been obtained, only if the holders of such Non-Voting Preferred Stock determine in their reasonable good faith judgment that such waiver adversely affects the liquidation preference, or otherwise significantly and adversely affects any other right or preference, of such shares of Non-Voting Preferred Stock (provided, for the avoidance of doubt, no such determination shall be required if the Corporation obtains a Deemed Liquidation Event Waiver from the holders of shares of Preferred Stock representing a majority of the then outstanding shares of Preferred Stock, voting together exclusively as a single class on an as-converted basis):

- (a) a merger or consolidation in which
  - (i) the Corporation is a constituent party or
  - (ii) a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

(b) (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

## 2.3.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Section 2.3.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the “**Merger Agreement**”) provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2.



(b) In the event of a Deemed Liquidation Event referred to in Section 2.3.1(a)(ii) or 2.3.1(b), if the Corporation does not effect a dissolution of the Corporation under the General Corporation Law within 90 days after such Deemed Liquidation Event, then (i) the Corporation shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Deemed Liquidation Event advising such holders of their right (and the requirements to be met to secure such right) pursuant to the terms of the following clause; (ii) to require the redemption of such shares of Preferred Stock, and (iii) if the Requisite Holders so request in a written instrument delivered to the Corporation not later than 120 days after such Deemed Liquidation Event, the Corporation shall use the consideration received by the Corporation for such Deemed Liquidation Event (net of any retained liabilities associated with the assets sold or technology licensed, as determined in good faith by the Board), together with any other assets of the Corporation available for distribution to its stockholders, all to the extent permitted by Delaware law governing distributions to stockholders (the “**Available Proceeds**”), on the 150th day after such Deemed Liquidation Event, to redeem all outstanding shares of Preferred Stock at a price per share equal to the Liquidation Amount. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, if the Available Proceeds are not sufficient to redeem all outstanding shares of Preferred Stock, the Corporation shall redeem a pro rata portion of each holder’s shares of Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and shall redeem the remaining shares as soon as it may lawfully do so under Delaware law governing distributions to stockholders. Prior to the distribution or redemption provided for in this Section 2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business.

2.3.3 Amount Deemed Paid or Distributed. The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board.

2.3.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “**Additional Consideration**”), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “**Initial Consideration**”) shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.3.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Initial Consideration.

2.3.5 Consideration to BHCA Holders. Notwithstanding anything herein to the contrary, no BHCA Holder (as defined herein) shall be required to accept as consideration in connection with any liquidation, dissolution, winding up of the Corporation or other Deemed Liquidation Event (a) shares of a bank, bank holding company or covered fund (each as defined in the Bank Holding Company Act (as defined herein)), (b) non-marketable securities, the receipt of which would trigger a



material regulatory restriction (including a Regulatory Event (as defined herein) as determined in good faith by such BHCA Holder), or (c) securities (i) if the issuer thereof is not then subject to the reporting requirements of section 13 or section 15(d) of the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder (as amended, the “**Exchange Act**”), (ii) if the issuer thereof is not then current in its filing of all required reports and other information under the Securities Act of 1933 and the rules and regulations promulgated thereunder (as amended, the “**Securities Act**”) and the Exchange Act, or (iii) that do not consist of a class of common equity that is then traded on a national securities exchange. To the extent necessary, consideration that would otherwise result in the allocation of securities referenced in any of (a), (b) and (c) above may instead be paid to the BHCA Holder in the form of cash equal to the fair market value of such consideration, as determined by the Board in good faith, and the payment of cash in lieu of such securities referenced in any of (a), (b) and (c) above shall not be a breach of this Section 2.

2.3.6 Definition of Regulatory Event. As used in this Restated Certificate, a “**Regulatory Event**” means an event in which any BHCA Holder receives notice from a governmental authority with competent jurisdiction over the BHCA Holder, or determines in good faith, in each case to the effect that (A) such BHCA Holder “controls” the Corporation for purposes of the BHCA, or any other applicable law, including, without limitation, the comparable provisions of any domestic or foreign banking law, each as applicable to such BHCA Holder, or (B) the Corporation or any of its subsidiaries engages in activities that make it impermissible or unduly burdensome under applicable law or regulatory or supervisory guidance for such BHCA Holder to continue to hold, directly or indirectly, without limitations or otherwise, any of its capital stock of the Corporation (or any other circumstance exists whereby it is impermissible or unduly burdensome under such applicable law or regulatory or supervisory guidance for such BHCA Holder to continue to hold, directly or indirectly, any capital stock of the Corporation) or (ii) the Corporation receives written notice from a governmental authority with competent jurisdiction over a BHCA Holder that any BHCA Holder “controls” the Corporation for purposes of the BHCA, or the comparable provisions of any domestic or foreign banking law, each as applicable to such BHCA Holder.

### 3. Voting.

3.1 General. On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Voting Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Voting Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Amended and Restated Certificate of Incorporation, holders of Voting Preferred Stock shall vote together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis. Except (a) for any matters on which the vote of the holders of Non-Voting Preferred Stock as a separate class or series is required under the General Corporation Law or other applicable law, or (b) as and to the extent otherwise expressly set forth in this Amended and Restated Certificate of Incorporation (the matters contemplated by the foregoing clauses (a) and (b), collectively, the “**Permitted Preferred Voting Matters**”), each holder of outstanding shares of Non-Voting Preferred Stock shall have no right to vote in respect of any share of Non-Voting Preferred Stock held by such holder. Except with regard to the Permitted Preferred Voting Matters, (i) the Non-Voting Preferred Stock shall not entitle its holder to vote together with the holders of Common Stock as a single class on an as-converted basis, (ii) the Non-Voting Preferred Stock shall not entitle its holder to vote together with the holders of Series A Voting Preferred Stock and/or Series B Voting Preferred Stock, as applicable, as a single class or series on an as-converted basis, and (iii) the Non-Voting Preferred Stock shall not be considered capital stock that is entitled to vote on any matter presented to the stockholders of this Corporation. With regard to the Permitted Preferred

Voting Matters, the holders of Non-Voting Preferred Stock shall vote together with the holders of Voting Preferred Stock as a single class on an as-converted basis, and shall be entitled to vote with the holders of the Voting Preferred Stock and the holders of the Common Stock, voting together as a single class on an as-converted basis, with each holder of Non-Voting Preferred Stock being entitled to cast the number of votes equal to the number of whole shares of Non-Voting Common Stock into which the shares of Non-Voting Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. No shares of Preferred Stock shall be redeemable at the option of the holders thereof.

3.2 Election of Directors. For so long as at least 6,000,000 shares of Voting Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Voting Preferred Stock or any constituent series or sub-series thereof) are outstanding, the holders of record of the shares of Voting Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect two (2) directors of the Corporation (the "**Voting Preferred Directors**"). For so long as at least 3,000,000 shares of Series B Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock or any constituent series or sub-series thereof) are outstanding, the holders of record of the shares of Series B Voting Preferred Stock, voting together as a single class on an as-converted basis, shall be entitled to elect one (1) director of the Corporation (the "**Series B Preferred Director**" and collectively with the Voting Preferred Directors, the "**Preferred Directors**"). The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect three (3) directors of the Corporation. Any director elected as provided in the first three sentences of this Section 3.2 may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class(es) or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Voting Preferred Stock, Series B Voting Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first three sentences of this Section 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Voting Preferred Stock, Series B Voting Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and Voting Preferred Stock, exclusively and voting together as a single class on an as-converted basis, shall be entitled to elect the balance of the total number of directors of the Corporation. At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.2. The rights of the holders of the Voting Preferred Stock, the rights of the holders of the Series B Voting Preferred Stock and the rights of the holders of the Common Stock under the first three sentences of this Section 3.2 shall terminate on the first date following the Series B Original Issue Date (as defined below) on which there are issued and outstanding less than 3,000,000 shares of Voting Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Voting Preferred Stock or any constituent series or sub-series thereof).

3.3 Series B Non-Voting Preferred Stock Protective Provisions. At any time when at least 1,000,000 shares of Series B Non-Voting Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Non-Voting Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of a majority of the Series B Non-Voting Preferred Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.3.1 liquidate, dissolve or wind-up the business and affairs of the Corporation (excluding a Deemed Liquidation Event);

3.3.2 (i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series B Non-Voting Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series B Non-Voting Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series B Non-Voting Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series B Non-Voting Preferred Stock in respect of any such right, preference or privilege;

3.3.3 amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that significantly and adversely affects the powers, preferences or rights of the Series B Non-Voting Preferred Stock;

3.3.4 pay or declare any dividend, or authorize or make any distribution, on any shares of capital stock of the Corporation at any time that there are declared but unpaid dividends on the Series B Non-Voting Preferred Stock, other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

3.3.5 directly or indirectly alter or change the rights, preferences or privileges of the Series B Non-Voting Preferred Stock in any significant and adverse manner, unless the Corporation alters or changes the rights, preferences or privileges of the Series B Voting Preferred Stock in the same manner; or

3.3.6 amend this Section 3.3.

3.4 Series A Non-Voting Preferred Stock Protective Provisions. At any time when at least 1,000,000 shares of Series A Non-Voting Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Non-Voting Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition

to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of a majority of the Series A Non-Voting Preferred Stock given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.4.1 liquidate, dissolve or wind-up the business and affairs of the Corporation (excluding a Deemed Liquidation Event);

3.4.2 (i) reclassify, alter or amend any existing security of the Corporation that is *pari passu* with the Series A Non-Voting Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Series A Non-Voting Preferred Stock in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is junior to the Series A Non-Voting Preferred Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or *pari passu* with the Series A Non-Voting Preferred Stock in respect of any such right, preference or privilege;

3.4.3 increase or decrease the authorized number of shares of Non-Voting Common Stock or Series A Non-Voting Preferred Stock;

3.4.4 amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that affects the powers, preferences or rights of the Series A Non-Voting Preferred Stock in a manner that is disproportionately adverse relative to the effect on the Series A Voting Preferred Stock, Series Seed 1 Preferred Stock, Series Seed 2 Preferred Stock or Series Seed 3 Preferred Stock;

3.4.5 pay or declare any dividend, or authorize or make any distribution, on any shares of capital stock of the Corporation at any time that there are declared but unpaid dividends on the Series A Non-Voting Preferred Stock, other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof; or

3.4.6 amend this Section 3.4.

3.5 Voting Preferred Stock Protective Provisions. At any time when at least 6,000,000 shares of Voting Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Voting Preferred Stock or any constituent series or sub-series thereof) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Holders given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.5.1 recapitalize, reclassify, reorganize, liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event;

3.5.2 amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Voting Preferred Stock;

3.5.3 purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock and (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at the lower of the original purchase price or the then-current fair market value thereof;

3.5.4 create, or hold capital stock in, any subsidiary that is not wholly owned (either directly or through one or more other subsidiaries) by the Corporation, or permit any subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any shares of any class or series of capital stock, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation, or permit any direct or indirect subsidiary to sell, lease, transfer, exclusively license or otherwise dispose (in a single transaction or series of related transactions) of all or substantially all of the assets of such subsidiary;

3.5.5 incur indebtedness in excess of \$200,000, other than trade indebtedness incurred in the ordinary course of business;

3.5.6 sell, issue, sponsor, create or distribute, or cause or permit any of its subsidiaries to sell, issue, sponsor, create or distribute, any digital tokens, cryptocurrency or other blockchain-based assets (collectively, “**Tokens**”), including through a pre-sale, initial coin offering, token distribution event or crowdfunding, or through the issuance of any instrument convertible into or exchangeable for Tokens; or

3.5.7 increase or decrease the authorized number of directors constituting the Board.

3.6 Preferred Stock Protective Provisions. At any time when at least 6,000,000 shares of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock or any constituent series or sub-series thereof) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, create, or authorize the creation of any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Preferred Stock, without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of a majority of the Voting Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect.

3.7 Regulatory Voting Restriction. Notwithstanding any other provision of this Amended and Restated Certificate of Incorporation: if a BHCA Holder at any time holds any shares of the capital stock of the Corporation that, but for this Section 3.7, individually or in the aggregate, would constitute more than 4.99% of the shares of the capital stock of the Corporation, or that would entitle the BHCA Holder to cast a number of votes representing more than 4.99% of the votes entitled to vote on any matter (including matters with respect to which such holders are entitled or required to provide their approval or consent) (the “**Regulatory Voting Restriction Level**”), including matters with respect to which (i) the Preferred Stock votes together as a single class on an as-converted basis and (ii) the Preferred Stock votes with shares of Common Stock as a single class on an as-converted to Common Stock basis, then any such shares in excess of the Regulatory Voting Restriction Level shall automatically and, except as provided for in Section 5.1.4, irrevocably convert into Non-Voting Preferred Shares or Non-Voting Common Shares, as applicable, and shall not entitle the holder thereof to vote on, or consent to, any matter whatsoever pursuant to this Amended and Restated Certificate of Incorporation and shall not be counted (in the numerator or denominator) for purposes of determining whether any vote or consent required under this Amended and Restated Certificate of Incorporation has been approved by the requisite percentage of shares or be counted towards any quorum required pursuant to this Amended and Restated Certificate of Incorporation; *provided*, however, that this Section 3.7 shall not apply to the ability to vote on the matters set out in Sections 3.3, 3.4, and 3.6.

#### 4. Optional Conversion.

The holders of the Preferred Stock shall have conversion rights as follows (the “**Conversion Rights**”):

##### 4.1 Right to Convert.

4.1.1 Conversion Ratio. (a) Each share of Voting Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by, in the case of (i) the Series B Voting Preferred Stock, dividing the Series B Voting Original Issue Price by the Series B Voting Conversion Price (as defined below) in effect at the time of conversion, (ii) the Series A Voting Preferred Stock, dividing the Series A Voting Original Issue Price by the Series A Voting Conversion Price (as defined below) in effect at the time of conversion, (iii) the Series Seed 1 Preferred Stock, dividing the Series Seed 1 Original Issue Price by the Series Seed 1 Conversion Price (as defined below) in effect at the time of conversion, (iv) the Series Seed 2 Preferred Stock, dividing the Series Seed 2 Original Issue Price by the Series Seed 2 Conversion Price (as defined below) in effect at the time of conversion, and (v) the Series Seed 3 Preferred Stock, dividing the Series Seed 3 Original Issue Price by the Series Seed 3 Conversion Price (as defined below) in effect at the time of conversion, and (b) each share of Non-Voting Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Non-Voting Common Stock as is determined by, in the case of (i) the Series B Non-Voting Preferred Stock, dividing the Series B Non-Voting Original Issue Price by the Series B Non-Voting Conversion Price (as defined below) in effect at the time of conversion, and (ii) the Series A Non-Voting Preferred Stock, dividing the Series A Non-Voting Original Issue Price by the Series A Non-Voting Conversion Price (as defined below) in effect at the time of conversion. The “**Series Seed 1 Conversion Price**” shall initially be equal to the Series Seed 1 Original Issue Price. Such initial Series Seed 1 Conversion Price, and the rate at which shares of Series Seed 1 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The “**Series Seed 2 Conversion Price**” shall initially be equal to the Series Seed 2 Original Issue Price. Such initial Series Seed 2 Conversion Price, and the rate at which shares of

Series Seed 2 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The “**Series Seed 3 Conversion Price**” shall initially be equal to the Series Seed 3 Original Issue Price. Such initial Series Seed 3 Conversion Price, and the rate at which shares of Series Seed 3 Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The “**Series A Voting Conversion Price**” shall initially be equal to the Series A Voting Original Issue Price. Such initial Series A Voting Conversion Price, and the rate at which shares of Series A Voting Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The “**Series A Non-Voting Conversion Price**” shall initially be equal to the Series A Non-Voting Original Issue Price. Such initial Series A Non-Voting Conversion Price, and the rate at which shares of Series A Non-Voting Preferred Stock may be converted into shares of Non-Voting Common Stock, shall be subject to adjustment as provided below. The “**Series B Voting Conversion Price**” shall initially be equal to the Series B Voting Original Issue Price. Such initial Series B Voting Conversion Price, and the rate at which shares of Series B Voting Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below. The “**Series B Non-Voting Conversion Price**” shall initially be equal to the Series B Non-Voting Original Issue Price. Such initial Series B Non-Voting Conversion Price, and the rate at which shares of Series B Non-Voting Preferred Stock may be converted into shares of Non-Voting Common Stock, shall be subject to adjustment as provided below. The Series Seed 1 Conversion Price, Series Seed 2 Conversion Price, Series Seed 3 Conversion Price, Series A Voting Conversion Price, Series A Non-Voting Conversion Price, Series B Voting Conversion Price, and Series B Non-Voting Conversion Price shall each individually be referred to herein as the “**Conversion Price**”, to be given logical effect as to the Series Seed 1 Conversion Price, Series Seed 2 Conversion Price, Series Seed 3 Conversion Price, Series A Voting Conversion Price, Series A Non-Voting Conversion Price, Series B Voting Conversion Price, and Series B Non-Voting Conversion Price, as applicable and appropriate given the context.

4.1.2 **BHCA Holder Right to Convert.** Any BHCA Holder (as defined below) shall, at its option, have the right to convert (A) any shares of Series A Voting Preferred Stock or shares of Series B Voting Preferred Stock held by such holder into an equivalent number of shares of Series A Non-Voting Preferred Stock or Series B Non-Voting Preferred Stock, respectively, in each case of a series with the same Original Issue Price (i.e., on a one-to-one basis) and (B) any shares of Common Stock held by such holder into an equivalent number of shares of Non-Voting Common Stock (i.e., on a one-to-one basis), in each case, at any time and without the payment of additional consideration by such holder. A “**BHCA Holder**” means any holder of Preferred Stock or Common Stock that is subject to the Bank Holding Company Act of 1956, as amended, and as implemented by the Board of Governors of the Federal Reserve System, whether pursuant to regulation or interpretation (the “**BHCA**”), together with its affiliates (as defined in Regulation Y, 12 C.F.R. Part 225).

4.1.3 **Termination of Conversion Rights.** In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock; provided that the foregoing termination of Conversion Rights shall not affect the amount(s) otherwise paid or payable in accordance with Section 2.1 to holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.2 **Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Voting Preferred Stock and no fractional shares of Non-Voting Common Stock shall be issued upon conversion of the Non-Voting 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 fair market value of a share of Common Stock or Non-Voting Common Stock, as



applicable, as determined in good faith by the Board. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock or Non-Voting Common Stock, as applicable, and the aggregate number of shares of Common Stock or Non-Voting Common Stock, as applicable, issuable upon such conversion.

#### 4.3 Mechanics of Conversion.

4.3.1 Notice of Conversion. In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock or Non-Voting Common Stock, as applicable, such holder shall (a) provide written notice to the Corporation's transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder's shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b), if such holder's shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder's name or the names of the nominees in which such holder wishes the shares of Common Stock or Non-Voting Common Stock, as applicable, to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock or Non-Voting Common Stock, as applicable, issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock or Non-Voting Common Stock, as applicable, issuable upon such conversion in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock or Non-Voting Common Stock, as applicable, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock or Non-Voting Common Stock, as applicable, otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

4.3.2 Reservation of Shares. The Corporation shall at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock and Non-Voting Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock or Non-Voting Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock or Non-Voting Common Stock, as applicable, to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to this Amended and Restated Certificate of Incorporation. Before taking any action which would cause an adjustment reducing any Conversion Price below the then par value of the shares of Common Stock or

Non-Voting Common Stock, as applicable, issuable upon conversion of the Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock or Non-Voting Common Stock, as applicable, at such adjusted Conversion Price.

4.3.3 Effect of Conversion. All shares of Preferred Stock which shall have been surrendered for conversion as herein provided shall no longer be deemed to be outstanding and all rights with respect to such shares shall immediately cease and terminate at the Conversion Time, except only the right of the holders thereof to receive shares of Common Stock or Non-Voting Common Stock, as applicable, in exchange therefor, to receive payment in lieu of any fraction of a share otherwise issuable upon such conversion as provided in Subsection 4.2 and to receive payment of any dividends declared but unpaid thereon. Any shares of Preferred Stock so converted shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Preferred Stock accordingly.

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to any Conversion Price shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock or Non-Voting Common Stock, as applicable, delivered upon conversion.

4.3.5 Taxes. The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock or Non-Voting Common Stock, as applicable, upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock or Non-Voting Common Stock, as applicable, in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

#### 4.4 Adjustments to Conversion Price for Diluting Issues.

4.4.1 Special Definitions. For purposes of this Article Fourth, the following definitions shall apply:

(a) **“Option”** shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Non-Voting Common Stock or Convertible Securities.

(b) **“Series B Original Issue Date”** shall mean the date on which the first share of Series B Preferred Stock was issued.

(c) **“Convertible Securities”** shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Common Stock or Non-Voting Common Stock, but excluding Options.

(d) **“Additional Shares of Common Stock”** shall mean all shares of Common Stock or Non-Voting Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Series B Original Issue Date, other than (1) the following

shares of Common Stock or Non-Voting Common Stock and (2) shares of Common Stock or Non-Voting Common Stock deemed issued pursuant to the following Options and Convertible Securities (the foregoing clauses (1) and (2), collectively, “**Exempted Securities**”):

- (i) shares of Common Stock or Non-Voting Common Stock, or Non-Voting Preferred Stock, or Options or Convertible Securities issued as a dividend or distribution on Preferred Stock or issuable upon the conversion of any Preferred Stock;
- (ii) shares of Common Stock or Non-Voting Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Subsection 4.5, 4.6, 4.7 or 4.8;
- (iii) shares of Common Stock or Non-Voting Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by a majority of the Board;
- (iv) shares of Common Stock or Non-Voting Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock or Non-Voting Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;
- (v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by a majority of the Board;
- (vi) shares of Common Stock, Non-Voting Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by a majority of the Board;
- (vii) shares of Common Stock, Non-Voting Common Stock, Options or Convertible Securities issued

as acquisition consideration pursuant to the acquisition of another corporation by the Corporation by merger, purchase of substantially all of the assets or other reorganization or to a joint venture agreement, provided that such issuances are approved by a majority of the Board;

- (viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by a majority of the Board; or
- (ix) that certain Warrant to Purchase Shares of Common Stock issued to JPMorgan Chase Bank N.A. as of the Series B Original Issue Date and shares of Common Stock and Non-Voting Common Stock issuable upon the exercise thereof.

4.4.2 No Adjustment of Conversion Price. No adjustment in any Conversion Price applicable to any shares of Series B Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series B Preferred Stock, exclusively as a single class on an as-converted basis, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock ("**Series B Adjustment Waiver**"), provided that, all such outstanding shares of Series B Non-Voting Preferred Stock shall be entitled to vote thereon and shall be counted for purposes of determining whether the requisite majority has been obtained, only if the holders of such Series B Non-Voting Preferred Stock determine in their reasonable good faith judgment that such waiver adversely affects the liquidation preference, or otherwise significantly and adversely affects any other right or preference, of such shares of Series B Non-Voting Preferred Stock (provided, for the avoidance of doubt, no such determination shall be required if the Corporation obtains a Series B Adjustment Waiver from the holders of shares of Series B Voting Preferred Stock representing a majority of the then outstanding shares of Series B Preferred Stock, voting together exclusively as a single class on an as-converted basis). No adjustment in any Conversion Price applicable to any shares of Series A Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of a majority of the then outstanding shares of Series A Preferred Stock, exclusively as a single class on an as-converted basis, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock ("**Series A Adjustment Waiver**"), provided that, all such outstanding shares of Series A Non-Voting Preferred Stock shall be entitled to vote thereon and shall be counted for purposes of determining whether the requisite majority has been obtained, only if the holders of such Series A Non-Voting Preferred Stock determine in their reasonable good faith judgment that such waiver adversely affects the liquidation preference, or otherwise significantly and adversely affects any other right or preference, of such shares of Series A Non-Voting Preferred Stock (provided, for the avoidance of doubt, no such determination shall be required if the Corporation obtains a Series A Adjustment Waiver from the holders of shares of Series A Voting Preferred Stock representing a majority of the then outstanding shares of Series A Preferred Stock, voting together exclusively as a single class on

an as-converted basis). No adjustment in any Conversion Price applicable to any shares of Series Seed Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the holders of at least a majority of the then outstanding shares of Series Seed Preferred Stock, exclusively as a single class on an as-converted basis, agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

#### 4.4.3 Deemed Issue of Additional Shares of Common Stock.

(a) If the Corporation at any time or from time to time after the Series B Original Issue Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares of Common Stock or Non-Voting Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to any Conversion Price pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock or Non-Voting Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing any Conversion Price to an amount which exceeds the lower of (i) the Conversion Price in effect immediately prior to the original adjustment made as a result of the issuance of such Option or Convertible Security, or (ii) the Conversion Price that would have resulted from any issuances of Additional Shares of Common Stock (other than deemed issuances of Additional Shares of Common Stock as a result of the issuance of such Option or Convertible Security) between the original adjustment date and such readjustment date.

(c) If the terms of any Option or Convertible Security (excluding Options or Convertible Securities which are themselves Exempted Securities), the issuance of which did not result in an adjustment to any Conversion Price pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than such Conversion Price then in effect, or because such Option or Convertible Security was issued before the Series B Original Issue Date), are revised after the Series B Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible

Security) to provide for either (1) any increase in the number of shares of Common Stock or Non-Voting Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Subsection 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to any Conversion Price pursuant to the terms of Subsection 4.4.4, the Conversion Price shall be readjusted to such Conversion Price as would have obtained had such Option or Convertible Security (or portion thereof) never been issued.

(e) If the number of shares of Common Stock or Non-Voting Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, is calculable at the time such Option or Convertible Security is issued or amended but is subject to adjustment based upon subsequent events, any adjustment to the Conversion Price provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock or Non-Voting Common Stock issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Corporation upon such exercise, conversion and/or exchange, cannot be calculated at all at the time such Option or Convertible Security is issued or amended, any adjustment to the Conversion Price that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Corporation shall at any time after the Series B Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Subsection 4.4.3), without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to such issuance or deemed issuance, then the Conversion Price shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 * (A + B) \div (A + C).$$

For purposes of the foregoing formula, the following definitions shall apply:

(a) “CP<sub>2</sub>” shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock;

(b) “CP<sub>1</sub>” shall mean the Conversion Price in effect immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock;

(c) “A” shall mean the number of shares of Common Stock and Non-Voting Common Stock outstanding immediately prior to such issuance or deemed issuance of

Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Common Stock and Non-Voting Common Stock issuable upon exercise of Options outstanding immediately prior to such issuance or deemed issuance or upon conversion or exchange of Convertible Securities (including the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

(d) “B” shall mean the number of shares of Common Stock and Non-Voting Common Stock that would have been issued if such Additional Shares of Common Stock had been issued or deemed issued at a price per share equal to  $CP_1$  (determined by dividing the aggregate consideration received by the Corporation in respect of such issue by  $CP_1$ ); and

(e) “C” shall mean the number of such Additional Shares of Common Stock issued in such transaction.

4.4.5 Determination of Consideration. For purposes of this Subsection 4.4, the consideration received by the Corporation for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(a) Cash and Property: Such consideration shall:

- (i) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation, excluding amounts paid or payable for accrued interest;
- (ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board; and
- (iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board.

(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 Subsection 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

- (i) The total amount, if any, received or receivable by the Corporation as consideration for the issue 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, by

- (ii) the maximum number of shares of Common Stock and Non-Voting 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, 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.

4.4.6 Multiple Closing Dates. In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price pursuant to the terms of Subsection 4.4.4, then, upon the final such issuance, the applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Series B Original Issue Date effect a subdivision of the outstanding Common Stock or Non-Voting Common Stock, the Conversion Price applicable to the Voting Preferred Stock (or any constituent series or sub-series thereof) and Non-Voting Preferred Stock, respectively, in effect immediately before that subdivision shall be proportionately decreased so that the number of shares of Common Stock or Non-Voting Common Stock, as applicable, issuable on conversion of each share of such series shall be increased in proportion to such increase in the aggregate number of shares of Common Stock or Non-Voting Common Stock outstanding, as applicable. If the Corporation shall at any time or from time to time after the Series B Original Issue Date combine the outstanding shares of Common Stock or Non-Voting Common Stock, the Conversion Price applicable to the Voting Preferred Stock (or any constituent series or sub-series thereof) and Non-Voting Preferred Stock, respectively, in effect immediately before the combination shall be proportionately increased so that the number of shares of Common Stock or Non-Voting Common Stock, as applicable, issuable on conversion of each share of such series shall be decreased in proportion to such decrease in the aggregate number of shares of Common Stock or Non-Voting Common Stock outstanding, as applicable. Any adjustment under this subsection shall become effective at the close of business on the date the subdivision or combination becomes effective.

#### 4.6 Adjustment for Certain Dividends and Distributions.

4.6.1 In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of

Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event each Conversion Price applicable to each series of Voting Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying each such Conversion Price then in effect by a fraction:

(1) the numerator of which shall be 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

(2) the denominator of which shall be 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.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, each such Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter each such Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of each series of Voting Preferred Stock simultaneously receive a dividend or other distribution of shares of Common Stock in a number equal to the number of shares of Common Stock as they would have received if all outstanding shares of such series of Voting Preferred Stock had been converted into Common Stock on the date of such event.

4.6.2 In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Non-Voting Common Stock entitled to receive, a dividend or other distribution payable on the Non-Voting Common Stock in additional shares of Non-Voting Common Stock, then and in each such event the Series B Non-Voting Conversion Price and/or Series A Non-Voting Conversion Price, as applicable, in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the applicable Conversion Price then in effect by a fraction:

(1) the numerator of which shall be the total number of shares of Non-Voting Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date, and

(2) the denominator of which shall be the total number of shares of Non-Voting 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 Non-Voting Common Stock issuable in payment of such dividend or distribution.

Notwithstanding the foregoing (a) if such record date shall have been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the applicable Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of the Series B Non-Voting Preferred Stock and/or Series A Non-Voting Preferred Stock, as applicable, simultaneously receive a dividend or other distribution of shares of Non-Voting Common Stock in a number equal to the number of shares of Non-Voting Common Stock as they would have received if all outstanding shares of the

applicable series of Non-Voting Preferred Stock had been converted into Non-Voting Common Stock on the date of such event.

4.7 Adjustments for Other Dividends and Distributions. In the event the Corporation at any time or from time to time after the Series B Original Issue Date shall make or issue, or fix a record date for the determination of holders of Common Stock and/or Non-Voting Common Stock entitled to receive, a dividend or other distribution payable in securities of the Corporation (other than a distribution of shares of Common Stock in respect of outstanding shares of Common Stock or a distribution of shares of Non-Voting Common Stock in respect of outstanding shares of Non-Voting Common Stock) or in other property and the provisions of Section 1 do not apply to such dividend or distribution, then and in each such event the holders of each series of Preferred Stock shall receive, simultaneously with the distribution to the holders of Common Stock and/or Non-Voting Common Stock, as applicable, a dividend or other distribution of such securities or other property in an amount equal to the amount of such securities or other property as they would have received if all outstanding shares of such series of Preferred Stock had been converted into Common Stock or Non-Voting Common Stock, as applicable, on the date of such event.

4.8 Adjustment for Merger or Reorganization, etc. Subject to the provisions of Subsection 2.3, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock and Non-Voting Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock or Non-Voting Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock or Non-Voting Common Stock of the Corporation issuable upon conversion of one share of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of each series of Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such series of Preferred Stock. For the avoidance of doubt, nothing in this Subsection 4.8 shall be construed as preventing the holders of Preferred Stock from seeking any appraisal rights to which they are otherwise entitled under the General Corporation Law in connection with a merger triggering an adjustment hereunder, nor shall this Subsection 4.8 be deemed conclusive evidence of the fair value of the shares of Preferred Stock in any such appraisal proceeding.

4.9 Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the applicable Conversion Price pursuant to this Section 4, the Corporation at its expense shall, as promptly as reasonably practicable but in any event not later than ten (10) days thereafter, compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of the applicable series of Preferred Stock a certificate setting forth such adjustment or readjustment (including the kind and amount of securities, cash or other property into which the Preferred Stock is convertible) and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, as promptly as reasonably practicable after the written request at any time of any holder of Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price of the applicable series of Preferred Stock then in effect, and (ii) the number of shares of Common Stock or Non-Voting Common Stock, as applicable, and the

amount, if any, of other securities, cash or property which then would be received upon the conversion of such series of Preferred Stock.

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock and Non-Voting Common Stock (or other capital stock or securities at the time issuable upon conversion of the Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, or to receive any right to subscribe for or purchase any shares of capital stock of any class or any other securities, or to receive any other security; or

(b) of any capital reorganization of the Corporation, any reclassification of the Common Stock and Non-Voting Common Stock of the Corporation, or any Deemed Liquidation Event; or

(c) of the voluntary or involuntary dissolution, liquidation or winding-up of the Corporation,

then, and in each such case, the Corporation will send or cause to be sent to the holders of the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock and Non-Voting Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock, the Common Stock and the Non-Voting Common Stock. Such notice shall be sent at least ten (10) days prior to the record date or effective date for the event specified in such notice.

5. Mandatory Conversion.

5.1 Trigger Events.

5.1.1 Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$11.76 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$200,000,000 of gross proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange or another exchange or marketplace approved the Board or (b) the date and time, or the occurrence of an event, specified by vote or written consent of a majority of the issued and outstanding shares of Series B Preferred Stock, exclusively voting together as a single class on an as-converted basis ("**Series B Triggering Vote**"), provided that, all such outstanding shares of Series B Non-Voting Preferred Stock shall be entitled to vote thereon and shall be counted for purposes of determining whether such majority has been obtained, only if the holders of such Series B Non-Voting Preferred Stock determine in their reasonable good faith judgment that such waiver would adversely affect the liquidation preference, or otherwise significantly and adversely affects any other right or preference, of such shares of Series B Non-

Voting Preferred Stock (provided, for the avoidance of doubt, no such determination shall be required if a Series B Triggering Vote is delivered by holders of shares of Series B Preferred Stock representing a majority of the then outstanding shares of Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock, voting together exclusively as a single class on an as-converted basis), then (i) all outstanding shares of Series B Voting Preferred Stock and Series B Non-Voting Preferred Stock shall automatically be converted into shares of Common Stock or Non-Voting Common Stock, as applicable, at the then effective Conversion Price as calculated pursuant to Subsection 4.1.1, and (ii) such shares may not be reissued by the Corporation.

5.1.2 Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.8569 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$200,000,000 of gross proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange or another exchange or marketplace approved the Board or (b) the date and time, or the occurrence of an event, specified by vote or written consent of a majority of the issued and outstanding shares of Series A Preferred Stock, exclusively as a single class on an as-converted basis ("**Series A Triggering Vote**"), provided that, all such outstanding shares of Series A Non-Voting Preferred Stock shall be entitled to vote thereon and shall be counted for purposes of determining whether the majority of the Series A Preferred Stock has been obtained, only if the holders of such Series A Non-Voting Preferred Stock determine in their reasonable good faith judgment that such waiver would adversely affect the liquidation preference, or otherwise significantly and adversely affects any other right or preference, of such shares of Series A Non-Voting Preferred Stock (provided, for the avoidance of doubt, no such determination shall be required if a Series A Triggering Vote is delivered by holders of shares of Series A Voting Preferred Stock representing a majority of the then outstanding shares of Series A Preferred Stock, voting together exclusively as a single class on an as-converted basis), then (i) all outstanding shares of Series A Voting Preferred Stock and Series A Non-Voting Preferred Stock shall automatically be converted into shares of Common Stock or Non-Voting Common Stock, as applicable, at the then effective Conversion Price as calculated pursuant to Subsection 4.1.1 and (ii) such shares may not be reissued by the Corporation.

5.1.3 Upon either (a) the closing of the sale of shares of Common Stock to the public at a price of at least \$2.0315 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock), in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$30,000,000 of gross proceeds, net of the underwriting discount and commissions, to the Corporation and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange or another exchange or marketplace approved the Board (a "**Qualified Public Offering**") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of a majority of the outstanding shares of Series Seed Preferred Stock, exclusively as a single class on an as-converted basis, then (i) all outstanding shares of Series Seed Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective Conversion Price as calculated pursuant to Subsection 4.1.1 and (ii) such shares may not be reissued by the Corporation. For purposes hereof, "**Mandatory Conversion Time**" shall mean the time of any closing or event (or the date and time specified or the time of the event specified in any vote or written consent) resulting in the automatic conversion of Series B Preferred Stock, Series A Preferred Stock or Series Seed Preferred Stock, as applicable pursuant to Subsections 5.1.1, 5.1.2 or 5.1.3.

5.1.4 Conversion upon Certain Transfers. Upon a transfer by a BHCA Holder of any shares of Non-Voting Preferred Stock and/or Non-Voting Common Stock (A) as part of a widespread public distribution, (B) as part of a bona fide private placement in which no single transferee or group of associated transferees acquires the right to purchase 2% or more of any class of voting securities (as such term is used for purposes of the BHCA) of the Corporation, or (C) to a party that would control more than 50% of every class of the voting securities (as such term is used for purposes of the BHCA) of the Corporation without giving effect to the shares of the capital stock of the Corporation transferred by the BHCA Holder, then such shares of Non-Voting Preferred Stock and/or Non-Voting Common Stock, as applicable, shall automatically and immediately after the consummation of such transfer convert as follows: (1) all shares of Series B Non-Voting Preferred Stock and/or Series A Non-Voting Preferred Stock so transferred shall convert into an equivalent number of shares of Series B Voting Preferred Stock or Series A Preferred Stock, respectively, (i.e., on a one-to-one basis); and (2) all shares of Non-Voting Common Stock so transferred shall convert into an equivalent number of shares of Common Stock (i.e., on a one-to-one basis), in each case, without the payment of additional consideration by such holder or the need for further action thereby.

5.2 Procedural Requirements. All holders of record of shares of Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation at the place designated in such notice. If so required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or by his, her or its attorney duly authorized in writing. All rights with respect to the Series B Preferred Stock, Series A Preferred Stock and/or Series Seed Preferred Stock, as applicable, converted pursuant to Subsection 5.1, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock or Non-Voting Common Stock, as applicable), will terminate at the Mandatory Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of any certificate or certificates (or lost certificate affidavit and agreement) for Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, the Corporation shall (a) issue and deliver to such holder, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock or Non-Voting Common Stock issuable on such conversion in accordance with the provisions hereof and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock or Non-Voting Common Stock otherwise issuable upon such conversion and the payment of any declared but unpaid dividends on the shares of Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, converted. Such converted Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, shall be retired and cancelled and may not be reissued as shares of such series, and the Corporation may thereafter take such appropriate action (without the need for stockholder action) as may be necessary to reduce the authorized number of shares of Series B Preferred Stock, Series A Preferred Stock, and/or Series Seed Preferred Stock, as applicable, accordingly.

6. Redeemed or Otherwise Acquired Shares. Any shares of Preferred Stock that are redeemed or otherwise acquired by the Corporation or any of its subsidiaries shall be automatically and immediately cancelled and retired and shall not be reissued, sold or transferred. Neither the Corporation nor any of its subsidiaries may exercise any voting or other rights granted to the holders of Preferred Stock following redemption.

7. Waiver. Unless otherwise specified herein, any of the rights, powers, preferences and other terms set forth herein that are specific to the Preferred Stock as a class (as opposed to rights held on a series by series basis) may be waived on behalf of all holders of Preferred Stock by the affirmative written consent or vote of the Requisite Holders (voting together as a single class on an as-converted basis).

8. Notices. Any notice required or permitted by the provisions of this Article Fourth to be given to a holder of shares of Preferred Stock shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic communication in compliance with the provisions of the General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

9. Regulatory Event. In the event of a Regulatory Event, the Corporation, the other holders of shares of the Corporation's capital stock, and the applicable BHCA Holder shall cooperate in good faith to restructure the terms of the investment by such BHCA Holder, including by amendment to the Amended and Restated Certificate of Incorporation, the Corporation's Amended and Restated Investor Rights' Agreement dated on or around the Series B Original Issue Date or any other applicable agreement in a manner acceptable to the Corporation and such BHCA Holder so as to remediate the circumstances giving rise to such Regulatory Event; provided, that any such restructuring of the investment shall not result in enhanced or more favorable rights or privileges of such BHCA Holder or any other holder of Preferred Stock with respect to such investment (including, without limitation, economic and voting rights).

**FIFTH:** Subject to any additional vote required by this Amended and Restated Certificate of Incorporation or Bylaws, in furtherance and not in limitation of the powers conferred by statute, the Board is expressly authorized to make, repeal, alter, amend and rescind any or all of the Bylaws of the Corporation.

**SIXTH:** Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation. Each director shall be entitled to one vote on each matter presented to the Board.

**SEVENTH:** Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

**EIGHTH:** Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the Bylaws of the Corporation.

**NINTH:** To the fullest extent permitted by law, 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. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or



limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth 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 of such director occurring prior to, such repeal or modification.

**TENTH:** To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which General Corporation Law permits the Corporation to provide indemnification) through Bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the General Corporation Law.

Any amendment, repeal or modification of the foregoing provisions of this Article Tenth shall not (a) adversely affect any right or protection of any director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or (b) increase the liability of any director of the Corporation with respect to any acts or omissions of such director, officer or agent occurring prior to such amendment, repeal or modification.

**ELEVENTH:** The Corporation renounces, to the fullest extent permitted by law, any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An “**Excluded Opportunity**” is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of Preferred Stock or any partner, member, director, stockholder, employee, affiliate or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, the persons referred to in clauses (i) and (ii) are “**Covered Persons**”), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation while such Covered Person is performing services in such capacity. Any repeal or modification of this Article Eleventh will only be prospective and will not affect the rights under this Article Eleventh in effect at the time of the occurrence of any actions or omissions to act giving rise to liability. Notwithstanding anything to the contrary contained elsewhere in this Amended and Restated Certificate of Incorporation, the affirmative vote of the Requisite Holders will be required to amend or repeal, or to adopt any provisions inconsistent with this Article Eleventh.

**TWELFTH:** Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation’s stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation’s certificate of incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive

jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

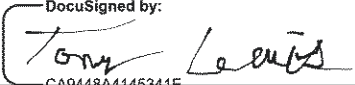
**THIRTEENTH:** For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Amended and Restated Certificate of Incorporation from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board (in addition to any other consent required under this Amended and Restated Certificate of Incorporation), such repurchase may be made without regard to any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any “preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined therein) shall be deemed to be zero (0).

\* \* \*

**4.** That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this corporation in accordance with Section 228 of the General Corporation Law.

**5.** That this Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation’s Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the General Corporation Law.

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this corporation on this 18th day of August, 2021.

By:  DocuSigned by:  
CA0448A4146341E...  
Anthony Lewis, Chief Executive Officer