

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM480479

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	CHANGE OF NAME		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
AURIONPRO SOLUTIONS, INC.		04/26/2018	Corporation: DELAWARE
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	CYBERINC CORPORATION		
<b>Street Address:</b>	251 Little Falls Drive		
<b>City:</b>	Wilmington, New Castle County		
<b>State/Country:</b>	DELAWARE		
<b>Postal Code:</b>	19808		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 11</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4267164	AURIONPRO	
<b>Registration Number:</b>	4267165	AURIONPRO SENA	
<b>Serial Number:</b>	86102687	BROWSE FEARLESSLY	
<b>Serial Number:</b>	87370902	CYBERINC	
<b>Serial Number:</b>	87370891	CYBERINC AN AURIONPRO COMPANY	
<b>Registration Number:</b>	4833286	ISLA	
<b>Registration Number:</b>	3996276	SENA	
<b>Registration Number:</b>	4562634	SPIKES	
<b>Registration Number:</b>	4685292	SPIKES	
<b>Registration Number:</b>	4785981	SPIKES SECURITY	
<b>Registration Number:</b>	4952323	SPIKES SECURITY	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Email:</b>	PTOIPINBOX@ReedSmith.com		
<b>Correspondent Name:</b>	Reed Smith LLP		
<b>Address Line 1:</b>	P.O. Box 448		
<b>Address Line 4:</b>	Pittsburg, PENNSYLVANIA 15230		

OP \$290.00 4267164

<b>NAME OF SUBMITTER:</b>	Jason e. Garcia
<b>SIGNATURE:</b>	/Jason E. Garcia/
<b>DATE SIGNED:</b>	07/03/2018
<b>Total Attachments: 17</b> source=AR Certificate of Incorporation of AP - Executed#page1.tif source=AR Certificate of Incorporation of AP - Executed#page2.tif source=AR Certificate of Incorporation of AP - Executed#page3.tif source=AR Certificate of Incorporation of AP - Executed#page4.tif source=AR Certificate of Incorporation of AP - Executed#page5.tif source=AR Certificate of Incorporation of AP - Executed#page6.tif source=AR Certificate of Incorporation of AP - Executed#page7.tif source=AR Certificate of Incorporation of AP - Executed#page8.tif source=AR Certificate of Incorporation of AP - Executed#page9.tif source=AR Certificate of Incorporation of AP - Executed#page10.tif source=AR Certificate of Incorporation of AP - Executed#page11.tif source=AR Certificate of Incorporation of AP - Executed#page12.tif source=AR Certificate of Incorporation of AP - Executed#page13.tif source=AR Certificate of Incorporation of AP - Executed#page14.tif source=AR Certificate of Incorporation of AP - Executed#page15.tif source=AR Certificate of Incorporation of AP - Executed#page16.tif source=AR Certificate of Incorporation of AP - Executed#page17.tif	

# Delaware

Page 1

The First State

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 "AURIONPRO SOLUTIONS, INC.", CHANGING ITS NAME FROM "AURIONPRO SOLUTIONS, INC." TO "CYBERINC CORPORATION", FILED IN THIS OFFICE ON THE TWENTY-SIXTH DAY OF APRIL, A.D. 2018, AT 1:59 O`CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



  
Jeffrey W. Bullock, Secretary of State

6114691 8100  
SR# 20183064556

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

Authentication: 202595256  
Date: 04-27-18

**TRADEMARK**  
**REEL: 006371 FRAME: 0045**

State of Delaware  
Secretary of State  
Division of Corporations  
Delivered 01:59 PM 04/26/2018  
FILED 01:59 PM 04/26/2018  
SR 20183064556 - File Number 6114691

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
AURIONPRO SOLUTIONS, INC.**

Aurionpro Solutions, Inc., a corporation organized and existing under the laws of the State of Delaware (the "*Corporation*"), certifies that:


1. The name of the Corporation is Aurionpro Solutions, Inc. The Corporation filed its original Certificate of Incorporation with the Secretary of State of the State of Connecticut on November 7, 2005. The Corporation amended and restated its Certificate of Incorporation on March 11, 2009. The Corporation further amended its Certificate of Incorporation on April 2, 2012, and February 10, 2015.

2. The Corporation filed a Certificate of Conversion and its Certificate of Incorporation with the Secretary of State of the State of Delaware on August 3, 2016. The Corporation amended and restated its Certificate of Incorporation on August 12, 2016.

3. This Second Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware (the "*General Corporation Law*"). The board of directors of the Corporation (the "*Board of Directors*") duly adopted resolutions proposing to amend and restate the Amended and Restated Certificate of Incorporation of the Corporation dated as of August 12, 2016, declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefor. The holders of a majority of the issued and outstanding shares of common stock and the holders of at least 66.66% of the issued and outstanding preferred stock of the Corporation duly approved to amend and restate the Amended and Restated Certificate of Incorporation of the Corporation dated as of August 12, 2016 by written consent in accordance with Section 228 of the General Corporation Law.

4. The text of the Amended and Restated Certificate of Incorporation is amended and restated to read as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Second Amended and Restated Certificate of Incorporation to be signed by Samir Shah, a duly authorized officer of the Corporation, on April 26, 2018.

  
\_\_\_\_\_  
Samir Shah  
Chief Executive Officer

## EXHIBIT A

### ARTICLE I

The name of the Corporation is Cyberinc Corporation.

### ARTICLE II

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

### ARTICLE III

The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808. The name of the registered agent at such address is Corporation Service Company.

### ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is One Hundred Seventy Million (170,000,000), consisting of up to (i) One Hundred Fifty Three Million One Hundred and Sixty Three Thousand Seven Hundred and Seventy Two (153,163,772) shares of common stock, \$0.0001 par value per share ("**Common Stock**"), and (ii) Sixteen Million Eight Hundred Thirty Six Thousand Two Hundred and Twenty Eight (16,836,228) shares of Preferred Stock, \$0.0001 par value per share ("**Preferred Stock**"). Two Million One Hundred Thirty Thousand Three Hundred Forty Six (2,130,346) shares of the authorized and unissued Preferred Stock shall be designated "**Series A Preferred Stock**". Fourteen Million Seven Hundred Five Thousand Eight Hundred and Eight Two (14,705,882) shares of the authorized and unissued Preferred Stock shall be designated "**Series B Preferred Stock**."

### ARTICLE V

The terms and provisions of the Common Stock and Preferred Stock are as follows:

1. **Definitions.** For purposes of this Article V, the following definitions shall apply:

(a) "**Conversion Price**" shall mean (i) \$1.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein) and (ii) \$0.17 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations and as otherwise set forth elsewhere herein)

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

(c) "**Corporation**" shall mean Cyberinc Corporation.

(d) "**Distribution**" shall mean the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation or its subsidiaries for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or

consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder, and (iv) any other repurchase or redemption of capital stock of the Corporation approved by the holders of the Common Stock and Preferred Stock voting as separate classes.

(e) “**Dividend Rate**” shall mean (i) an annual rate of \$0.05 per share for the Series A Preferred Stock (subject to adjustment from time to time for subsequent Recapitalizations as set forth elsewhere herein) and (ii) an annual rate of \$0.01 per share for the Series B Preferred Stock (subject to adjustment from time to time for subsequent Recapitalizations as set forth elsewhere herein).

(f) “**Options**” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Common Stock or Convertible Securities.

(g) “**Original Issue Price**” shall mean (i) \$1.00 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) and (ii) \$0.17 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) “**Preferred Stock**” shall mean the Series A Preferred Stock and the Series B Preferred Stock.

(i) “**Recapitalization**” shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

(j) “**Series A Liquidation Preference**” shall mean \$1.50 per share for the Series A Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(k) “**Series B Liquidation Preference**” shall mean \$0.51 per share for the Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

## 2. **Dividends.**

### (a) **Preferred Stock.**

(i) **Series B Preferred Stock.** In any calendar year, the holders of outstanding shares of Series B Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate (as defined herein) per annum specified for such shares of Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on the Series A Preferred Stock or the Common Stock in such calendar year. No Distributions shall be made with respect to the Series A Preferred Stock or the Common Stock unless dividends on the Series B Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Series B Preferred Stock have been paid or set aside for payment to the holders of Series B Preferred Stock. The right to receive dividends on shares of Series B Preferred Stock shall be cumulative; *provided, however*, that except as set forth in Subsections 3(a)(i) and 3(b) and upon redemption, such accruing dividends shall be payable only when, as and if declared by the Board of Directors and the Corporation shall be under no obligation to pay such accruing dividends. Payment of any dividends to the holders of Series B Preferred Stock shall be on a *pro rata, pari passu* basis in proportion to the Dividend Rate for the Series B Preferred Stock.

(ii) **Series A Preferred Stock.** In any calendar year, the holders of outstanding shares of Series A Preferred Stock shall be entitled to receive dividends, when, as and if declared by the Board of Directors, out of any assets at the time legally available therefor, at the Dividend Rate specified for such shares of Series A Preferred Stock payable in preference and priority to any declaration or payment of any Distribution on Common Stock in such calendar year. No Distributions shall be made with respect to the Common Stock unless dividends on the Series A Preferred Stock have been declared in accordance with the preferences stated herein and all declared dividends on the Series A Preferred Stock have been paid or set aside for payment to the Series A Preferred Stock holders. The right to receive dividends on shares of Series A Preferred Stock shall not be cumulative, and no right to dividends shall accrue to holders of Series A Preferred Stock by reason of the fact that dividends on said shares are not declared or paid. Payment of any dividends to the holders of Series A Preferred Stock shall be on a pro rata, pari passu basis in proportion to the Dividend Rate for the Series A Preferred Stock.

(b) **Common Stock.** Subject to the payment in full of all preferential dividends to which the holders of Preferred Stock are entitled hereunder and subject to Section 6 of this Article V, the holders of Common Stock shall be entitled to receive dividends out of funds legally available therefor at such times and in such amounts as the Board of Directors may determine in its sole discretion.

(c) **Non-Cash Distributions.** Whenever a Distribution provided for in this Section 2 shall be payable in property other than cash, the value of such Distribution shall be deemed to be the fair market value of such property as determined in good faith by the Board of Directors.

(d) **Consent to Certain Distributions.** In accordance with Section 500 of the California Corporations Code, a distribution can be made without regard to any preferential dividends arrears amount (as defined in Section 500 of the California Corporations Code) or any preferential rights amount (as defined in Section 500 of the California Corporations Code) in connection with (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right provided that such repurchase is approved by majority vote of the Board of Directors, (iii) repurchases of Common Stock or Preferred Stock in connection with the settlement of disputes with any stockholder, or (iv) any other repurchase or redemption of Common Stock or Preferred Stock approved by majority vote of the Board of Directors and approved by the holders of majority of the outstanding shares of Preferred Stock and Common Stock voting together as a single class.

(e) **Waiver of Dividends.** Any dividend preference of any series of Preferred Stock may be waived, in whole or in part, by the consent or vote of the holders of the majority of the outstanding shares of such series.

### 3. **Liquidation Rights.**

#### (a) **Liquidation Preference.**

(i) **Series B Liquidation Preference.** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series B Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Series A Preferred Stock or Common Stock by reason of their ownership of such stock, an amount per share for each share of Series B Preferred Stock held by them equal to the sum of (i) the Series B Liquidation Preference specified for such share of Series B Preferred Stock and (ii) any dividends accrued but unpaid thereon, whether or not declared, together with any other dividends declared but unpaid thereon (if

any) on such share of Series B Preferred Stock, or such lesser amount as may be approved by the holders of the majority of the outstanding shares of Series B Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of Series B Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Subsection 3(a)(i), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of Series B Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Subsection 3(a)(i).

(ii) ***Series A Liquidation Preference.*** In the event of any liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the holders of Series A Preferred Stock shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of Common Stock by reason of their ownership of such stock, an amount per share for each share of Series A Preferred Stock held by them equal to the sum of (i) the Series A Liquidation Preference specified for such share of Series A Preferred Stock and (ii) all declared but unpaid dividends (if any) on such share of Series A Preferred Stock, or such lesser amount as may be approved by the holders of the majority of the outstanding shares of Series A Preferred Stock. If upon the liquidation, dissolution or winding up of the Corporation, the assets of the Corporation legally available for distribution to the holders of Series A Preferred Stock are insufficient to permit the payment to such holders of the full amounts specified in this Subsection 3(a)(ii), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Series A Preferred Stock in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Subsection 3(a)(ii).

(b) ***Remaining Assets.*** After the payment to the holders of Preferred Stock of the full preferential amounts specified above, the entire remaining assets of the Corporation legally available for distribution by the Corporation shall be distributed with equal priority and *pro rata* among the holders of the Preferred Stock and Common Stock in proportion to the number of shares of Common Stock held by them, with the shares of Preferred Stock being treated for this purpose as if they had been converted to shares of Common Stock at the then applicable Conversion Rate.

(c) ***Shares not Treated as Both Preferred Stock and Common Stock in any Distribution.*** Shares of Preferred Stock shall not be entitled to be converted into shares of Common Stock in order to participate in any Distribution, or series of Distributions, as shares of Common Stock, without first forgoing participation in the Distribution, or series of Distributions, as shares of Preferred Stock.

(d) ***Liquidation.*** For purposes of this Section 3, a liquidation, dissolution or winding up of the Corporation shall be deemed to be occasioned by, or to include, (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned direct or indirect subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a liquidation, dissolution or winding up pursuant to clause (i) or (ii) of the preceding sentence may be waived by the consent or vote of (x) the holders



of at least 66.66% of the then outstanding shares of Series A Preferred Stock and (y) the holders of at least 66.66% of the then outstanding shares of Series B Preferred Stock.

(e) **Valuation of Non-Cash Consideration.** If any assets of the Corporation distributed to stockholders in connection with any liquidation, dissolution, or winding up of the Corporation are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board of Directors, *except that* any publicly-traded securities to be distributed to stockholders in a liquidation, dissolution, or winding up of the Corporation shall be valued as follows:

(i) if the securities are then traded on a national securities exchange, then the value of the securities shall be deemed to be the average of the closing prices of the securities on such exchange over the ten (10) trading day period ending five (5) trading days prior to the Distribution;

(ii) if the securities are actively traded over-the-counter, then the value of the securities shall be deemed to be the average of the closing bid prices of the securities over the ten (10) trading day period ending five (5) trading days prior to the Distribution.

In the event of a merger or other acquisition of the Corporation by another entity, the Distribution date shall be deemed to be the date such transaction closes.

For the purposes of this Subsection 3(e), “*trading day*” shall mean any day which the exchange or system on which the securities to be distributed are traded is open and “*closing prices*” or “*closing bid prices*” shall be deemed to be: (i) for securities traded primarily on the New York Stock Exchange, the American Stock Exchange or a Nasdaq market, the last reported trade price or sale price, as the case may be, at 4:00 p.m., New York time, on that day and (ii) for securities listed or traded on other exchanges, markets and systems, the market price as of the end of the regular hours trading period that is generally accepted as such for such exchange, market or system. If, after the date hereof, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value shall be determined as of such other generally accepted benchmark times.

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

(a) **Right to Convert.** Each share of Preferred Stock shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Preferred Stock, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price (as defined herein) for the relevant series by the Conversion Price for such series. (The number of shares of Common Stock into which each share of Preferred Stock of a series may be converted is hereinafter referred to as the “*Conversion Rate*” for each such series.) Upon any decrease or increase in the Conversion Price for any series of Preferred Stock, as described in this Section 4, the Conversion Rate for such series shall be appropriately increased or decreased.

(b) **Automatic Conversion.** Each share of Preferred Stock shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “*Securities Act*”), covering the offer and sale of the Common Stock, *provided that* (x) the offering price per share is not less than \$2.00 (as adjusted for subsequent Recapitalizations), (y) the aggregate value of the Company’s outstanding shares of Common Stock (including shares of Common Stock issued upon conversion of Preferred Stock) immediately prior to such offering is at least \$100,000,000 (based on the initial offering price per share in such offering) and (z) the aggregate gross proceeds to the Corporation are

not less than \$30,000,000, or (ii) upon the receipt by the Corporation of a written request for such conversion from (x) the holders of at least 66.66% of the then outstanding shares of Series A Preferred Stock and (y) the holders of at least 66.66% of the then outstanding shares of Series B Preferred Stock, or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “*Automatic Conversion Event*”).

(c) ***Mechanics of Conversion.*** No fractional shares of Common Stock shall be issued upon conversion of Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined in good faith by the Board of Directors. For such purpose, all shares of Preferred Stock held by each holder of Preferred Stock shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Preferred Stock shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, the holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Preferred Stock or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that the holder elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Preferred Stock are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Preferred Stock shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Preferred Stock, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) ***Adjustments to Conversion Price for Diluting Issues.***

(i) ***Special Definition.*** For purposes of this Subsection 4(d), “*Additional Shares of Common*” shall mean all shares of Common Stock issued (or, pursuant to paragraph 4(d)(iii) of this Article V, deemed to be issued) by the Corporation after the filing of this Second Amended and Restated Certificate of Incorporation, other than issuances or deemed issuances of:

- (1) shares of Common Stock upon the conversion of the Preferred Stock;
- (2) shares of Common Stock and options, warrants or other rights to purchase Common Stock issued or issuable to employees, officers or directors of, or consultants or advisors to the Corporation or any subsidiary pursuant to stock grants, restricted stock purchase agreements, option plans, purchase plans, incentive programs or similar arrangements shares of or options, warrants or other rights to purchase Common Stock net of any stock repurchases or expired or terminated options pursuant to the terms of any option plan, restricted stock purchase agreement or similar arrangement;
- (3) shares of Common Stock upon the exercise or conversion of Options or Convertible Securities;

(4) shares of Common Stock issued or issuable as a dividend or distribution on Preferred Stock or pursuant to any event for which adjustment is made pursuant to Subsections 4(e), 4(f) or 4(g) hereof;

(5) shares of Common Stock issued or issuable in a registered public offering under the Securities Act pursuant to which all outstanding shares of Preferred Stock are automatically converted into Common Stock pursuant to an Automatic Conversion Event;

(6) shares of Common Stock issued or issuable 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 the Board of Directors;

(7) shares of Common Stock issued or issuable to banks, equipment lessors, real property lessors, financial institutions or other persons engaged in the business of making loans pursuant to a debt financing, commercial leasing or real property leasing transaction approved by the Board of Directors;

(8) shares of Common Stock issued or issuable in connection with any settlement of any action, suit, proceeding or litigation approved by the Board of Directors;

(9) shares of Common Stock issued or issuable in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors;

(10) shares of Common Stock issued or issuable to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors; and

(11) securities issued or issuable in any other transaction for which exemption from these price-based antidilution provisions is approved before or after issuance of the securities by affirmative vote of the holders of a majority of the then outstanding shares of Preferred Stock.

(ii) ***No Adjustment of Conversion Price.*** No adjustment in the Conversion Price of a particular series of Preferred Stock shall be made in respect of the issuance of Additional Shares of Common unless the consideration per share (as determined pursuant to paragraph 4(d)(vi) of this Article V) for an Additional Share of Common issued or deemed to be issued by the Corporation is less than the Conversion Price in effect on the date of, and immediately prior to such issue, for such series of Preferred Stock. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common if the Corporation receives prior written notice from the holders of at least a majority of the then outstanding shares of such series of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common.

(iii) ***Deemed Issue of Additional Shares of Common.*** In the event the Corporation at any time or from time to time after the date of the filing of this Second Amended and Restated Certificate of Incorporation shall issue any Options or Convertible Securities or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or Convertible Securities, then the maximum number of shares (as set forth in the instrument relating thereto without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable upon the exercise of such Options or, in the case of Convertible Securities, the conversion or exchange of such Convertible Securities or, in the case of Options for Convertible Securities, the exercise of such Options

and the conversion or exchange of the underlying securities, shall be deemed to have been 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, *provided* that in any such case in which shares are deemed to be issued:

(1) no further adjustment in the Conversion Price of any series of Preferred Stock shall be made upon the subsequent issue of Convertible Securities or shares of Common Stock in connection with the exercise of such Options or conversion or exchange of such Convertible Securities;

(2) if such Options or Convertible Securities by their terms provide, with the passage of time or otherwise, for any change in the consideration payable to the Corporation or in the number of shares of Common Stock issuable upon the exercise, conversion or exchange thereof (other than a change pursuant to the anti-dilution provisions of such Options or Convertible Securities such as this Subsection 4(d) or pursuant to Recapitalization provisions of such Options or Convertible Securities such as Subsections 4(e), 4(f) and 4(g) of this Article V), the Conversion Price of each series of Preferred Stock and any subsequent adjustments based thereon shall be recomputed to reflect such change as if such change had been in effect as of the original issue thereof (or upon the occurrence of the record date with respect thereto);

(3) no readjustment pursuant to clause (2) above shall have the effect of increasing the Conversion Price of a series of Preferred Stock to an amount above the Conversion Price that would have resulted from any other issuances of Additional Shares of Common and any other adjustments provided for herein between the original adjustment date and such readjustment date;

(4) upon the expiration of any such Options or any rights of conversion or exchange under such Convertible Securities which shall not have been exercised, the Conversion Price of each series of Preferred Stock computed upon the original issue thereof (or upon the occurrence of a record date with respect thereto) and any subsequent adjustments based thereon shall, upon such expiration, be recomputed as if:

(a) in the case of Convertible Securities or Options for Common Stock, the only Additional Shares of Common issued were the shares of Common Stock, if any, actually issued upon the exercise of such Options or the conversion or exchange of such Convertible Securities and the consideration received therefor was the consideration actually received by the Corporation for the issue of such exercised Options plus the consideration actually received by the Corporation upon such exercise or for the issue of all such Convertible Securities which were actually converted or exchanged, plus the additional consideration, if any, actually received by the Corporation upon such conversion or exchange, and

(b) in the case of Options for Convertible Securities, only the Convertible Securities, if any, actually issued upon the exercise thereof were issued at the time of issue of such Options, and the consideration received by the Corporation for the Additional Shares of Common deemed to have been then issued was the consideration actually received by the Corporation for the issue of such exercised Options, plus the consideration deemed to have been received by the Corporation (determined pursuant to paragraph 4(d)(vi) of this Article V) upon the issue of the Convertible Securities with respect to which such Options were actually exercised; and

(5) if such record date shall have been fixed and such Options or Convertible Securities are not issued on the date fixed therefor, the adjustment previously made in the Conversion Price which became effective on such record date shall be canceled as of the close of business on such record date, and thereafter the Conversion Price shall be adjusted pursuant to this paragraph 4(d)(iii) of this Article V as of the actual date of their issuance.

(iv) **Adjustment of Conversion Price Upon Issuance of Additional Shares of Common.** In the event this Corporation shall issue Additional Shares of Common (including Additional Shares of Common deemed to be issued pursuant to paragraph 4(d)(iii) of this Article V) without consideration or for a consideration per share less than the applicable Conversion Price of a series of Preferred Stock in effect on the date of and immediately prior to such issue, then, the Conversion Price of the affected series of Preferred Stock shall be reduced, concurrently with such issue, to a price (calculated to the nearest one-ten-thousandth of a cent) determined in accordance with the following formula:

$$CP_2 = CP_1 \times \frac{(A + B)}{(A + C)}$$

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

(1) “CP<sub>2</sub>” shall mean the Conversion Price of the affected series of Preferred Stock in effect immediately after such issue of Additional Shares of Common;

(2) “CP<sub>1</sub>” shall mean the Conversion Price of the affected series of Preferred Stock in effect immediately prior to such issue of Additional Shares of Common;

(3) “A” shall mean the number of shares of Common Stock outstanding immediately prior to such issue of Additional Shares of Common (treating for this purpose as outstanding all shares of Common Stock issuable upon exercise of Options outstanding immediately prior to such issue or upon conversion or exchange of Convertible Securities (including the affected series of Preferred Stock) outstanding (assuming exercise of any outstanding Options and Convertible Securities therefor) immediately prior to such issue);

(4) “B” shall mean the number of shares of Common Stock that would have been issued if such Additional Shares of Common had been issued at a price per share equal to CP<sub>1</sub> (determined by *dividing* the aggregate consideration received by the Corporation for the total number of issued Additional Shares of Common *by* CP<sub>1</sub>); and

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

(v) Notwithstanding the foregoing, the Conversion Price shall not be reduced at such time if the amount of such reduction would be less than \$0.01, but any such amount shall be carried forward, and a reduction will be made with respect to such amount at the time of, and together with, any subsequent reduction which, together with such amount and any other amounts so carried forward, equal \$0.01 or more in the aggregate. For the purposes of paragraph 4(d)(iv) of this Article V, all shares of Common Stock issuable upon conversion of all outstanding shares of Preferred Stock and the exercise and/or conversion of any other outstanding Convertible Securities and all outstanding Options shall be deemed to be outstanding.

(vi) **Determination of Consideration.** For purposes of this Subsection 4(d), the consideration received by the Corporation for the issue (or deemed issue) of any Additional Shares of Common shall be computed as follows:

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

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Corporation before deducting any reasonable discounts, commissions or other

expenses allowed, paid or incurred by the Corporation for any underwriting or otherwise in connection with such issuance;

(b) 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 of Directors; and

(c) in the event Additional Shares of Common 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 (a) and (b) above, as reasonably determined in good faith by the Board of Directors.

(2) ***Options and Convertible Securities.*** The consideration per share received by the Corporation for Additional Shares of Common deemed to have been issued pursuant to paragraph 4(d)(iii) of this Article V shall be determined by dividing

(x) the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, *plus* the 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

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

(e) ***Adjustments for Subdivisions or Combinations of Common Stock.*** In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Common Stock, the Conversion Price of each series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Prices in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) ***Adjustments for Subdivisions or Combinations of Preferred Stock.*** In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and applicable liquidation preference of the affected series of Preferred Stock in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Preferred Stock or a series of Preferred Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Preferred Stock, the Dividend Rate, Original Issue Price and applicable liquidation preference of the affected series of Preferred Stock in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(g) ***Adjustments for Reclassification, Exchange and Substitution.*** Subject to Section 3 of this Article V, if the Common Stock issuable upon conversion of the Preferred Stock shall be changed into

the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders would otherwise have been entitled to receive each holder of such Preferred Stock shall have the right thereafter to convert such shares of Preferred Stock into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such series of Preferred Stock immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(h) ***Certificate as to Adjustments.*** Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Preferred Stock a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Preferred Stock, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Preferred Stock.

(i) ***Waiver of Adjustment of Conversion Price.*** Notwithstanding anything herein to the contrary, any downward adjustment of the Conversion Price of any series of Preferred Stock may be waived by the consent or vote of the holders of the majority of the outstanding shares of such series either before or after the issuance causing the adjustment. Any such waiver shall bind all future holders of shares of such series of Preferred Stock.

(j) ***Notices of Record Date.*** In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or

(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a liquidation, dissolution or winding up of the corporation pursuant to Subsection 3(d) of this Article V;

then, in connection with each such event, this Corporation shall send to the holders of the Preferred Stock prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in paragraphs 4(j)(ii) and 4(j)(iii) above.

Such written notice shall be given by first class mail (or express courier), postage prepaid, addressed to the holders of Preferred Stock at the address for each such holder as shown on the books of the Corporation and shall be deemed given on the date such notice is mailed.

The notice provisions set forth in this section may be shortened or waived prospectively or retrospectively by the consent or vote of the holders of a majority of the Preferred Stock, voting as a single class and on an as-converted basis.

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

5. **Voting.**

(a) **Restricted Class Voting.** Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) **No Series Voting.** Other than as provided herein or required by law, there shall be no series voting.

(c) **Preferred Stock.** Each holder of Preferred Stock shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Preferred Stock held by such holder could be converted as of the record date. The holders of shares of the Preferred Stock shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Preferred Stock shall be entitled to notice of any stockholders' meeting in accordance with the current bylaws of the Corporation (the "**Bylaws**"). Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Preferred Stock held by each holder could be converted), shall be disregarded.

(d) **Election of Directors.** Subject to rights of any stockholder(s) to appoint directors and fill vacancies on the Board of Directors, the number of directors shall be no more than six (6) or such other number as may be fixed from time to time be determined by majority vote of the Board of Directors and majority vote of the holders of Common Stock and Preferred Stock, voting together as a single class on an as-converted basis. For so long as at least 10,410,000 shares of Series B Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) remain outstanding, the holders of Series B Preferred Stock, voting as a separate class, shall be entitled to elect two (2) members of the Board of Directors. For so long as Aurionpro Solutions Ltd. or its affiliates own at least 10,410,000 shares of Common Stock and/or Preferred Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), Aurionpro Solutions Ltd. shall be entitled to elect two (2) members of the Board of Directors. For so long as at least 43,120,000 shares of Common Stock (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein) remain outstanding, the holders of Common Stock, voting as a separate class, shall be entitled to elect one (1) member of the Board of Directors, who shall be the Corporation's Chief Executive Officer. The holders of the Common Stock, Series A Preferred Stock and Series B Preferred Stock, each voting separately as a class, shall be entitled to elect one (1) member of the Board of Directors who shall be an independent director which independent director shall be a person acceptable to a majority of other directors, including at least one director nominated by each of Aurionpro Solutions Ltd., holders of Series B Preferred Stock and holders of Common Stock. If a vacancy on the Board of Directors (however occurring, including, without limitation, by reason of an increase in the size of the Board of Directors, or the death, resignation, disqualification or removal of a director on the Board of Directors) is to be filled, the



stockholder(s) or the same class or classes of stockholders as those who would be entitled to vote to fill such vacancy shall vote to fill such vacancy.

(e) **Adjustment in Authorized Common Stock.** The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by an affirmative vote of the holders of a majority of the stock of the Corporation.

(f) **Common Stock.** Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held.

(g) **California Section 2115.** To the extent that Section 2115 of the California General Corporation Law makes Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law applicable to the Corporation, the Corporation's stockholders shall have the right to cumulate their votes in connection with the election of directors as provided by Section 708 subdivisions (a), (b) and (c) of the California General Corporation Law.

6. **Amendments and Changes.** As long as 1,010,000 shares of Series A Preferred Stock shall be issued and outstanding and as long as 10,410,000 shares of Series B Preferred Stock shall be issued and outstanding (each subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein), the Corporation shall not, without first obtaining the approval (by vote or written consent as provided by law) of (x) the holders of at least 66.66% of the outstanding shares of Series A Preferred Stock and (y) holders of at least 66.66% of the outstanding shares of Series B Preferred Stock (in each case, in addition to any other vote required by law or the Certificate of Incorporation or Bylaws), any such act or transaction or transactions effected without such approval being null and void *ab initio* and of no force or effect:

(a) amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws (including pursuant to a merger) if such action would adversely alter the rights, preferences, privileges or powers of, or restrictions provided for the benefit of the Preferred Stock or any series thereof;

(b) increase or decrease (other than for decreases resulting from conversion of the Preferred Stock) the authorized number of shares of Preferred Stock or any series thereof;

(c) authorize or create (by reclassification, merger or otherwise) or issue or obligate itself to issue any new class or series of equity security (including any security convertible into or exercisable for any equity security) having rights, preferences or privileges with respect to dividends or payments upon liquidation senior to or on a parity with any series of Preferred Stock or having voting rights other than those granted to the Preferred Stock generally;

(d) enter into any transaction or series of related transactions deemed to be a liquidation, dissolution or winding up of the Corporation pursuant to Subsection 3(d) of this Article V;

(e) authorize a merger, acquisition or sale of substantially all of the assets of the Corporation or any of its subsidiaries (other than (i) a merger exclusively to effect a change of domicile of the Corporation and (ii) a merger, acquisition or sale of substantially all of the assets of the Corporation where the gross consideration per share received by the holders of Preferred Stock equals to or is more than 1.5 times the Original Issue Price (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein);

(f) voluntarily liquidate or dissolve;

(g) increase the size of the Board of Directors;

(h) encumber or grant a security interest in all or substantially all of the assets of the Corporation in connection with an indebtedness of the Corporation in excess of \$1,000,000 (excluding existing debt incurred or refinanced of any existing indebtedness);

(i) acquire a material amount of assets through a merger or purchase of all or substantially all of the assets or capital stock of another entity where the purchase price exceeds \$3,000,000 in the aggregate for such transaction;

(j) declare or pay any Distribution with respect to the Preferred Stock or Common Stock of the Corporation;

(k) increase the number of shares authorized for issuance under any existing stock or option plan or create any new stock or option plan;

(l) amend this Section 6.

7. **Reissuance of Preferred Stock.** In the event that any shares of Preferred Stock shall be converted pursuant to Section 4 of this Article V or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

8. **Redemption.** The Preferred Stock is not mandatorily redeemable.

9. **Notices.** Any notice required by the provisions of this Article V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation.

#### ARTICLE VI

The Corporation is to have perpetual existence.

#### ARTICLE VII

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

#### ARTICLE VIII

Unless otherwise set forth herein, the number of directors that constitute the Board of Directors of the Corporation shall be fixed by, or in the manner provided in, the Bylaws.

#### ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws.

#### ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended 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 Delaware General Corporation Law, as so amended. Neither any amendment nor

repeal of this Section 1, nor the adoption of any provision of this Corporation's Certificate of Incorporation inconsistent with this Section 1, shall eliminate or reduce the effect of this Section 1, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Section 1, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding. A right to indemnification or to advancement of expenses arising under a provision of this Certificate of Incorporation or a bylaw of the Corporation shall not be eliminated or impaired by an amendment to this Certificate of Incorporation or the Bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

#### ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws.

#### ARTICLE XII

To the extent permitted by law, the Corporation renounces any expectancy that a Covered Person offer the Corporation an opportunity to participate in a Specified Opportunity and waives any claim that the Specified Opportunity constitutes a corporate opportunity that should have been presented by the Covered Person to the Corporation; *provided, however*, that the Covered Person acts in good faith. A "**Covered Person**" is any member of the Board of Directors of the Corporation (who is not an employee of the Corporation or any of its subsidiaries) who is a partner, member or employee of a Fund. A "**Specified Opportunity**" is any transaction or other matter that is presented to the Covered Person in his or her capacity as a partner, member or employee of a Fund (and other than in connection with his or her service as a member of the Board of Directors of the Corporation) that may be an opportunity of interest for both the Corporation and the Fund. A "**Fund**" is an entity that is a holder of Preferred Stock and that is primarily in the business of investing in other entities, or an entity that manages such an entity.