

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM858683

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	CHANGE OF NAME		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Big Bear Labs, Inc.		12/07/2022	Corporation: DELAWARE
RECEIVING PARTY DATA			
Name:	Butter Payments, Inc.		
Street Address:	1 Letterman Drive, Bldg. C #3500		
City:	San Francisco		
State/Country:	CALIFORNIA		
Postal Code:	94129		
Entity Type:	Corporation: DELAWARE		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Serial Number:	97126012	BUTTER.	
Serial Number:	97975386	BUTTER.	
CORRESPONDENCE DATA			
Fax Number:	9498520004		
<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>			
Phone:	9498520000		
Email:	tess@kppb.com		
Correspondent Name:	KPPB LLP		
Address Line 1:	3780 Kilroy Airport Way Suite 320		
Address Line 4:	Long Beach, CALIFORNIA 90806		
ATTORNEY DOCKET NUMBER:	B46-07609		
NAME OF SUBMITTER:	Andrew Brennan		
SIGNATURE:	/Andrew Brennan/		
DATE SIGNED:	12/05/2023		
Total Attachments: 24			
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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 "BIG BEAR LABS, INC.", CHANGING ITS NAME FROM "BIG BEAR LABS, INC." TO "BUTTER PAYMENTS, INC.", FILED IN THIS OFFICE ON THE SEVENTH DAY OF DECEMBER, A.D. 2022, AT 1:15 O`CLOCK P.M.




Jeffrey W. Bullock, Secretary of State

7876100 8100
SR# 20224200643

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 205030742
Date: 12-07-22

TRADEMARK
REEL: 008279 FRAME: 0409

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BIG BEAR LABS, INC.**

Vijay Menon hereby certifies that:

ONE: The current name of this corporation is Big Bear Labs, Inc. The date of filing the original Certificate of Incorporation of this company with the Secretary of State of the State of Delaware was February 28, 2020.

TWO: He is the duly elected and acting Chief Executive Officer of Big Bear Labs, Inc., a Delaware corporation.

THREE: The Certificate of Incorporation of this company is hereby amended and restated in its entirety to read as follows:

I.

The name of this corporation is Butter Payments, Inc. (the "*Company*").

II.

The address of the registered office of the Company in the State of Delaware is 300 Delaware Ave, Suite 270, Wilmington, DE, New Castle County, Zip Code 19801-6601, and the name of the registered agent of the corporation in the State of Delaware at such address is Filejet Inc.

III.

The purpose of the Company is to engage in any lawful act or activity for which a corporation may be organized under the Delaware General Corporation Law ("*DGCL*").

IV.

A. The Company is authorized to issue three classes of stock to be designated, respectively, "Class A Common Stock," "Class F Common Stock," and "Preferred Stock." The total number of shares that the Company is authorized to issue is 524,383,798 shares, 313,000,000 shares of which shall be Class A Common Stock (the "*Class A Common*"), 71,012,685 shares of which shall be Class F Common Stock (the "*Class F Common*" and together with the Class A Common, the "*Common Stock*"), and 140,371,113 shares of which shall be Preferred Stock (the "*Preferred Stock*"). Each of Class A Common, Class F Common, and Preferred Stock shall have a par value of \$0.000001 per share.

B. Subject to Section D.3.c), the number of authorized shares of Class A Common may be increased or decreased (but not below the number of shares of Class A Common then outstanding) by the affirmative vote of the holders of a majority of the stock of the Company entitled to vote (voting together as a single class on an as-if-converted basis (other than with respect to the Class F Common)).

C. 66,713,579 of the authorized shares of Preferred Stock are hereby designated "Series A-1 Preferred Stock" (the "*Series A-1 Preferred*"), 18,932,451 of the authorized shares of Preferred Stock are hereby designated "Series A-2 Preferred Stock" (the "*Series A-2 Preferred*"); 33,713,554 of the

authorized shares of Preferred Stock are hereby designated "Series A-3 Preferred Stock" (the "**Series A-3 Preferred**"); and 21,011,529 of the authorized shares of Preferred Stock are hereby designated "Series A-4 Preferred Stock" (the "**Series A-4 Preferred**" and, together with the Series A-1 Preferred, Series A-2 Preferred and the Series A-3 Preferred, the "**Series A Preferred**").

D. The rights, preferences, privileges, restrictions and other matters relating to the Class F Common and the Preferred Stock are as follows:

1. DIVIDEND RIGHTS.

a. Holders of Preferred Stock, in preference to the holders of Common Stock, shall be entitled to receive on a *pari passu* basis, but only out of funds that are legally available therefor, cash dividends at the rate of 8% of the applicable Preferred Stock Original Issue Price (as defined below) per annum on each outstanding share of Preferred Stock. Such dividends shall be payable only when, as and if declared by the Board of Directors (the "**Board**") and shall be non-cumulative.

b. The "**Original Issue Price**" of the Series A-1 Preferred shall be \$0.30450, of the Series A-2 Preferred shall be \$0.01450, of the Series A-3 Preferred shall be \$0.06443, of the Series A-4 Preferred shall be \$0.22552, (each as adjusted for any stock dividends, combinations, splits, recapitalizations and the like with respect to such shares after the filing date hereof).

c. So long as any shares of Preferred Stock are outstanding, the Company shall not pay or declare any dividend (whether in cash or property), or make any other distribution on the Common Stock, or purchase, redeem or otherwise acquire for value any shares of Common Stock, until all dividends as set forth in Section 1(a) above on the Preferred Stock shall have been paid or declared and set apart, except for:

(i) acquisitions of Common Stock by the Company pursuant to agreements that permit the Company to repurchase such shares at no more than cost upon termination of services to the Company;

(ii) acquisitions of Common Stock in exercise of the Company's right of first refusal to repurchase such shares; or

(iii) distributions to holders of Common Stock in accordance with Section 4.

d. In the event dividends are paid on any share of Common Stock, the Company shall pay, on the same date, an additional dividend on all outstanding shares of Preferred Stock in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

e. The provisions of Sections 1(c) and 1(d) shall not apply to a dividend payable solely in Common Stock to which the provisions of Section 5(e) hereof are applicable, or any repurchase of any outstanding securities of the Company that is approved by the Board.

2. Subject to the provisions of Section 1, a distribution to the Company's shareholders may be made without regard to the preferential dividends arrears amount or any preferential rights amount (each as determined under applicable law).

3. VOTING RIGHTS.

a. General Rights. Except as otherwise provided herein or as required by law, the Class F Common and the Preferred Stock shall vote together with the Class A Common at any annual or special meeting of the stockholders and not as separate classes, and may act by written consent in the same manner as the Class A Common. Each holder of shares of Class F Common shall be entitled to the number of votes equal to ten (10) multiplied by the number of shares of Class A Common into which such shares of Class F Common could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Class A Common and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company. Each holder of shares of the Preferred Stock shall be entitled to the number of votes equal to the number of shares of Class A Common into which such shares of Preferred Stock could be converted (pursuant to Section 5 hereof) immediately after the close of business on the record date fixed for such meeting or the effective date of such written consent and shall have voting rights and powers equal to the voting rights and powers of the Class A Common and shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Company.

b. Separate Vote of Class F Common. For so long as any shares of Class F Common remain outstanding, the Company shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, statutory conversion or otherwise, do any of the following without, in addition to any other vote or consent required herein or by law, the written consent or affirmative vote of a majority of the outstanding Class F Common 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:

(i) any amendment, alteration, or repeal of any provision of the Certificate of Incorporation or the Bylaws of the Company (including any filing of a Certificate of Designation) that has the effect of altering or changing the voting or other powers, preferences, or other special rights, privileges or restrictions of the Class F Common so as to affect them adversely;

(ii) Any increase or decrease in the authorized number of shares of Class F Common;

(iii) To subdivide, combine, purchase or redeem (or permit any subsidiary to subdivide, combine, purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of Class A Common other than repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Company or any subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price thereof;

(iv) Any decrease in the authorized number of members of the Board elected by the Class F Common; or

(v) Any implementation of any "pay to play" provision on the Class F Common or other similar provisions adversely affecting the conversion or other powers, preferences, or other special rights, privileges or restrictions of the Class F Common in a manner that is dependent on participation by the holders of Class F Common in a financing (whether equity or debt).

c. Separate Vote of Preferred Stock. For so long as any shares of Preferred Stock remain outstanding, the Company shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, statutory conversion or otherwise, do any of the following without, in addition to any other vote or consent required herein or by law or the Bylaws of the

Company, the written consent or affirmative vote of a majority of the outstanding Preferred Stock voting together as a single class (on an as-converted basis) (the “*Preferred Majority*”), 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:

(i) liquidate, dissolve or wind-up the business and affairs of the Company, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

(ii) amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Company in a manner that adversely affects the powers, preferences or rights of the Preferred Stock (or any series thereof);

(iii) create, or authorize the creation of, or issue or obligate itself to issue shares of, or reclassify, any capital stock unless the same ranks junior to the Preferred Stock with respect to its rights, preferences and privileges;

(iv) increase the authorized number of shares of Common Stock or Preferred Stock, or of any class or series thereof;

(v) sell, issue, sponsor, create or distribute any digital tokens, cryptocurrency, non-fungible tokens 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;

(vi) subdivide, combine, purchase or redeem (or permit any subsidiary to subdivide, combine, purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Company 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 Company or any subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price thereof;

(vii) otherwise enter into or be a party to any transaction with any director or officer of the Company or any “associate” (as defined in Rule 12b-2 promulgated under the Exchange Act) of any such person, except for transactions made in the ordinary course of business and pursuant to reasonable requirements of the Company’s business and upon fair and reasonable terms that are approved by the Board; or

(viii) increase or decrease the authorized number of directors constituting the Board or change the number of votes entitled to be cast by any director or directors on any matter.

d. Election of Board of Directors.

(i) For so long as any shares of Class F Common remain outstanding, the holders of Class F Common, voting as a separate class, shall be entitled to elect two (2) members of the Board at each meeting or pursuant to each consent of the Company’s stockholders for the

election of directors, and to remove from office such directors in accordance with applicable law and to fill any vacancy caused by the resignation, death or removal of such directors.

(ii) For so long as 35,092,778 shares of Series A Preferred remain outstanding, the holders of Series A Preferred, voting as a separate class, shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors in accordance with applicable law and to fill any vacancy caused by the resignation, death or removal of such directors; *provided however*, for administrative convenience, the initial director elected in accordance with this section may also be appointed by the Board in connection with the approval of the initial issuance of Preferred Stock without a separate action by the holders of Series A Preferred.

(iii) The holders of Class A Common and Class F Common, voting together as a single class on an as-if-converted basis (other than with respect to the Class F Common), shall be entitled to elect one (1) member of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors in accordance with applicable law and to fill any vacancy caused by the resignation, death or removal of such directors.

(iv) The holders of Preferred Stock, Class A Common and Class F Common, voting together as a single class, shall be entitled to elect all remaining members of the Board at each meeting or pursuant to each consent of the Company's stockholders for the election of directors, and to remove from office such directors in accordance with applicable law and to fill any vacancy caused by the resignation, death or removal of such directors.

(v) A vacancy in any directorship filled by the holders of any class or classes or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or classes or series or by any remaining director or directors elected by the holders of such class or classes or series. Any director may be removed during his or her term of office without cause, by, and only by, the affirmative vote of the holders of the shares of the class or series of 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 in lieu of a meeting of the holders of such class or classes or series, and any vacancy thereby created may be filled by the holders of that class or series of stock represented at the meeting or pursuant to written consent. 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.

(vi) No person entitled to vote at an election for directors may cumulate votes to which such person is entitled unless required by applicable law at the time of such election. During such time or times that applicable law requires cumulative voting, every stockholder entitled to vote at an election for directors may cumulate such stockholder's votes and give one candidate a number of votes equal to the number of directors to be elected multiplied by the number of votes to which such stockholder's shares are otherwise entitled, or distribute the stockholder's votes on the same principle among as many candidates as such stockholder desires. No stockholder, however, shall be entitled to so cumulate such stockholder's votes unless (A) the names of such candidate or candidates have been placed in nomination prior to the voting and (B) the stockholder has given notice at the meeting, prior to the voting, of such stockholder's intention to cumulate such stockholder's votes. If any stockholder has given proper notice to cumulate votes, all stockholders may cumulate their votes for any candidates who have been properly placed in nomination. Under cumulative voting, the candidates receiving the highest number of votes, up to the number of directors to be elected, are elected.

e. BHC Act Voting Limitation.

(i) All issued and outstanding shares of capital stock of the Company entitled to vote or consent as a class of voting shares on any matter or class of matters shall for the purposes of this Section 3(e) be designated the “*Voting Capital Stock*” with respect to such class. For purposes of this Section 3(e), a “class of voting shares” shall be defined according to the Federal Reserve Board’s Regulation Y (12 C.F.R. Part 225), and any successor regulation thereto and related guidance and interpretations (“*Regulation Y*”).

(ii) Any shares of Voting Capital Stock held or controlled by a BHC Investor (as defined below) that are determined at any time to cause such BHC Investor’s percentage interest in a class of voting shares to exceed 4.99%, or that would provide the BHC Investor with the right to cast more than 4.99% of the votes, entitled to vote on, or consent to, any matter other than BHC Act Matters, shall not be entitled to vote on, or consent to, any matter other than BHC Act Matters, subject to this Section 3. The restrictions described in the preceding sentence are referred to herein as the “*Regulatory Voting Restriction*.” Voting Capital Stock subject to the Regulatory Voting Restriction shall not be counted (in the numerator or denominator) for purposes of determining whether any vote or consent required under this Certificate of Incorporation has been approved by the requisite percentage of shares or be counted towards any quorum required pursuant to this Certificate of Incorporation; *provided, however*, that Voting Capital Stock subject to the Regulatory Voting Restriction shall retain class voting and consent rights over the BHC Act Matters to the extent such class voting and consent rights are granted herein.

(iii) Shares of Voting Capital Stock subject to the Regulatory Voting Restriction shall remain subject to such restriction upon any transfer to any transferee, except that such shares of Voting Capital Stock shall no longer be subject to such restriction after the BHC Investor transfers such shares to a Permitted Transferee (as defined below).

(iv) Notwithstanding anything to the contrary herein, no provision of this Section 3(e) may be amended, modified, waived or repealed without the prior written consent of each BHC Investor.

(v) For purposes of this Article IV:

(a) “*Affiliate*” of any person or entity shall have the meaning set forth in the U.S. Bank Holding Company Act of 1956, as amended, and the rules and regulations thereunder, including Regulation Y (the “*BHC Act*”);

(b) A “*BHC Investor*” means any holder of Voting Capital Stock of the Company that is a Bank Holding Company (as determined in accordance with the BHC Act or any Affiliate or an initial or subsequent transferee of such holder, other than a transferee pursuant to a Permitted Regulatory Transfer (as defined below)).

(c) “*BHC Act Matters*” means, with respect to any BHC Investor, any action proposed to be taken by the Company that would:

(1) materially or adversely amend, alter or repeal any provision of this Certificate of Incorporation or the Bylaws of the Company that relates to the rights and preferences of the stock held by such BHC Investor;

(2) issue shares of any additional class or series of stock or shares of any other security convertible into or exercisable for any equity security having any preference or priority as to voting, dividends, or distribution of assets senior to the stock held by such BHC Investor;

(3) result in any liquidation, dissolution or winding up of the Company, or

(4) reclassify, alter or amend any existing security of the Company, if such reclassification, alteration or amendment would render such other security senior to the stock held by such BHC Investor in respect of any such right, preference or privilege.

(d) A “*Permitted Regulatory Transfer*” shall mean a transfer of shares by a BHC Investor:

(1) in a widespread public distribution;

(2) to the Company;

(3) in transfers in which no transferee (or group of associated transferees) would receive 2% or more of the outstanding securities of any class of voting shares of the Company; or

(4) to a transferee that would control more than 50% of every class of voting shares of the Company without any transfer

(e) A “*Permitted Transferee*” means any transferee of shares of the Company pursuant to a Permitted Regulatory Transfer.

4. LIQUIDATION RIGHTS.

a. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Company available for distribution to its stockholders, and in the event of an Asset Transfer (as defined below) or an Acquisition (as defined below) (collectively, a “*Deemed Liquidation Event*”) the holders of shares of Preferred Stock then outstanding shall be entitled to be paid out of the consideration payable to stockholders in such Deemed Liquidation Event or out of the Available Proceeds (as defined below), as applicable, before any payment shall be made to the holders of Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the applicable Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Preferred Stock been converted into Common Stock pursuant to Section 5 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “*Liquidation Amount*”). If upon any such liquidation, dissolution, winding up or Deemed Liquidation Event, the assets of the Company 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 Section 4(a), the holders of shares of Preferred Stock shall share ratably 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.

b. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company, after the payment of all Liquidation Amounts required to be paid to the holders of shares of Preferred Stock as set forth in Section 4(a) above, the remaining assets of the Company legally available for distribution (or, in the case of a Deemed Liquidation Event, the consideration not payable to the holders of shares of Preferred Stock pursuant to Section 4(a) above or the remaining Available Proceeds, as the case may be), if any, shall be distributed among the holders of the Common Stock, pro rata based on the number of shares held by each such holder.

c. Asset Transfers and Acquisitions.

(i) **(i)** “*Acquisition*” shall mean any consolidation or merger of the Company or sale of voting control with or into any other corporation or other entity or person, or any other corporate reorganization, or sale of voting control other than any such consolidation, merger or reorganization or sale of voting control in which the shares of capital stock of the Company immediately prior to such consolidation, merger or reorganization, or sale of voting control continue to represent a majority of the voting power of the surviving entity (or, if the surviving entity is a wholly owned subsidiary, its parent) immediately after such consolidation, merger or reorganization, or sale of voting control (*provided* that, for the purpose of this 4(c), all shares of Class A Common issuable upon exercise of options outstanding immediately prior to such consolidation or merger or upon conversion of any other stock, options, warrants, purchase rights or other securities exercisable for or convertible into Class A Common outstanding immediately prior to such merger or consolidation shall be deemed to be outstanding immediately prior to such merger or consolidation and, if applicable, converted or exchanged in such merger or consolidation on the same terms as the actual outstanding shares of capital stock are converted or exchanged); *provided* that an Acquisition shall not include any transaction or series of transactions solely for bona fide equity financing purposes in which cash is received by the Company or any successor or indebtedness of the Company is cancelled or converted or a combination thereof; and **(ii)** “*Asset Transfer*” shall mean the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Company or any subsidiary of the Company of all or substantially all of the assets of the Company and its subsidiaries taken as a whole or 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 Company if substantially all of the assets of the Company 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 Company.

(ii) In Deemed Liquidation Event, if the consideration to be received is securities of a corporation or other property other than cash, its value will be deemed its fair market value, as determined in good faith by the Board. Any securities shall be valued as follows:

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

(1) If traded on a securities exchange, the value shall be deemed to be the average of the closing prices of the securities on such exchange over the twenty (20) trading day period ending three (3) trading days prior to the closing of the transaction;

(2) If actively traded over-the-counter, the value shall be deemed to be the average of the closing bid or sale prices (whichever is applicable) over the twenty (20) trading day period ending three (3) trading days prior to the closing of the transaction; and

(3) If there is no active public market, the value shall be the fair market value thereof, as determined in good faith by the Board.

(b) The method of valuation of securities subject to investment letter or other restrictions on free marketability (other than restrictions arising solely by virtue of a stockholder's status as an affiliate or former affiliate) shall be to make an appropriate discount from the market value determined as above in (a) (1), (2) or (3) to reflect the approximate fair market value thereof, as determined in good faith by the Board.

(iii) The Company shall not have the power to effect an Acquisition or Asset Transfer unless the definitive transaction documents for such transaction provides that the consideration payable to the stockholders of the Company in connection therewith shall be allocated among the holders of capital stock of the Company in accordance with this Section 4.

d. In the event of a Deemed Liquidation Event, if any portion of the consideration payable to the stockholders of the Company is payable only upon satisfaction of contingencies (the "***Additional Consideration***"), the definitive transaction documents for such Deemed Liquidation Event 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 Company in accordance with Sections 4(a), and 4(b) 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 Company upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Company in accordance with Sections 4(a) and 4(b) after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 4(d), consideration placed into escrow or retained as holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

e. In an Asset Transfer, if the Company does not effect a dissolution of the Company under the DGCL within 90 days after such Asset Transfer, then (i) the Company shall send a written notice to each holder of Preferred Stock no later than the 90th day after the Asset Transfer 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 (ii) if the Preferred Majority so request in a written instrument delivered to the Company not later than 120 days after such Asset Transfer, the Company shall use the consideration received by the Company for such Asset Transfer (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 Company 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 Asset Transfer, to redeem all outstanding shares of Preferred Stock at a price per share equal to the applicable 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 Company 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 4(e), the Company 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.

5. CONVERSION RIGHTS. The holders of each of the Class F Common and Preferred Stock (together, the “*Convertible Stock*”) shall have the following rights with respect to the conversion of the Convertible Stock into shares of Class A Common:

a. Class F Common.

(i) Optional Conversion. Subject to and in compliance with the provisions of this Section 5, any shares of Class F Common may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Class A Common. The number of shares of Class A Common to which a holder of Class F Common shall be entitled upon conversion shall be the product obtained by multiplying the “Class F Common Conversion Rate” then in effect (determined as provided in Section 5(a)(ii)) by the number of shares of Class F Common being converted.

(ii) Class F Common Conversion Rate. The conversion rate in effect at any time for conversion of the Class F Common (the “*Class F Common Conversion Rate*”) shall be the quotient obtained by dividing \$0.000001 (the “*Class F Original Issue Price*”) by the “Class F Common Conversion Price,” calculated as provided in Section 5(a)(iii).

(iii) Class F Common Conversion Price. The conversion price for the Class F Common shall initially be the Class F Original Issue Price (the “*Class F Common Conversion Price*”). Such initial Class F Common Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Class F Common Conversion Price herein shall mean the Class F Common Conversion Price as so adjusted.

b. Preferred Stock.

(i) Optional Conversion. Subject to and in compliance with the provisions of this Section 5, any shares of Preferred Stock may, at the option of the holder, be converted at any time into fully-paid and nonassessable shares of Class A Common. The number of shares of Class A Common to which a holder of Preferred Stock shall be entitled upon conversion shall be the product obtained by multiplying the applicable “Preferred Stock Conversion Rate” then in effect (determined as provided in Section 5(b)(ii)) by the number of shares of Preferred Stock being converted.

(ii) Preferred Stock Conversion Rate. The conversion rate in effect at any time for conversion of each series of Preferred Stock (the “*Preferred Stock Conversion Rate*”) shall be the quotient obtained by dividing the applicable Original Issue Price by the applicable “Preferred Stock Conversion Price,” calculated as provided in Section 5(b)(iii).

(iii) Preferred Stock Conversion Price. The conversion price for each series of Preferred Stock shall initially be the applicable Original Issue Price of such series of Preferred Stock (the “*Preferred Stock Conversion Price*” and each of the Preferred Stock Conversion Price and the Class F Common Conversion Price, a “*Conversion Price*”). Such initial Preferred Stock Conversion Price shall be adjusted from time to time in accordance with this Section 5. All references to the Preferred Stock Conversion Price herein shall mean the applicable Preferred Stock Conversion Price as so adjusted.

c. Mechanics of Optional Conversion.

(i) In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Class A Common, such holder shall (a) provide written notice to the Company’s transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal

office of the Company if the Company 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 Company to indemnify the Company against any claim that may be made against the Company 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 Company if the Company 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 Class A Common to be issued. If required by the Company, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Company, 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 Company if the Company 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 Class A Common issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Company shall, as soon as practicable after the Conversion Time (A) 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 Class A Common 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 Class A Common, and (B) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

(ii) 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 Class A Common in exchange therefor 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 Company 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.

d. **Adjustment for Stock Splits and Combinations.** If at any time or from time to time on or after the date that the first share of Series A-1 Preferred is issued (the "**Original Issue Date**") the Company effects a subdivision of the outstanding Class A Common, the Conversion Prices in effect immediately before that subdivision shall be proportionately decreased. Conversely, if at any time or from time to time after the Original Issue Date the Company combines the outstanding shares of Class A Common into a smaller number of shares, the Conversion Prices in effect immediately before the combination shall be proportionately increased. Any adjustment under this Section 5(d) shall become effective at the close of business on the date the subdivision or combination becomes effective.

e. **Adjustment for Class A Common Dividends and Distributions.** If at any time or from time to time on or after the Original Issue Date the Company pays to holders of Class A Common a dividend or other distribution in additional shares of Class A Common, each Conversion Price then in effect shall be decreased as of the time of such issuance, as provided below:

(i) Such Conversion Price shall be adjusted by multiplying the applicable Conversion Price then in effect by a fraction equal to:

(a) the numerator of which is the total number of shares of Class A Common issued and outstanding immediately prior to the time of such issuance, and

(b) the denominator of which is the total number of shares of Class A Common issued and outstanding immediately prior to the time of such issuance plus the number of shares of Class A Common issuable in payment of such dividend or distribution;

(ii) If the Company fixes a record date to determine which holders of Class A Common are entitled to receive such dividend or other distribution, the Conversion Prices shall be fixed as of the close of business on such record date and the number of shares of Class A Common shall be calculated immediately prior to the close of business on such record date; and

(iii) If such record date is fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Prices shall be recomputed accordingly as of the close of business on such record date and thereafter such Conversion Prices shall be adjusted pursuant to this Section 5(e) to reflect the actual payment of such dividend or distribution.

f. Adjustment for Reclassification, Exchange, Substitution, Reorganization, Merger or Consolidation. If at any time or from time to time on or after the Original Issue Date the Class A Common issuable upon the conversion of the Convertible Stock is changed into the same or a different number of shares of any class or classes of stock, whether by recapitalization, reclassification, merger, consolidation or otherwise, in any such event each share of the Convertible Stock shall thereafter be convertible in lieu of the Class A Common into which it was convertible prior to such event into the kind and amount of securities, cash or other property that a holder of the number of shares of Class A Common of the Company issuable upon conversion of one share of such class of the Convertible Stock immediately prior to such recapitalization, reclassification, merger, consolidation or other transaction would have been entitled to receive pursuant to such transaction, all subject to further adjustment as provided herein or with respect to such other securities or property by the terms thereof. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 5 with respect to the rights of the holders of applicable class of the Convertible Stock after the capital reorganization to the end that the provisions of this Section 5 (including adjustment of the applicable Conversion Price then in effect and the number of shares issuable upon conversion of the Convertible Stock) shall be applicable after that event and be as nearly equivalent as practicable.

g. Adjustments to Conversion Price for Diluting Issues.

(i) Special Definitions. For purposes of this Article IV, the following definitions shall apply:

(a) “*Additional Shares of Common Stock*” shall mean all shares of Common Stock issued (or, pursuant to Section 5(g)(iii) below, deemed to be issued) by the Company after the Original Issue Date, other than (1) the following shares of Class A Common and (2) shares of Class A Common deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, “*Exempted Securities*”):

(1) as to any series of Preferred Stock shares of Class A Common, Options or Convertible Securities issued as a dividend or distribution on such series of Preferred Stock;

(2) shares of Class A Common, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Class A Common that is covered by Section 5(d), (e) or (f);

(3) shares of Class A Common issued upon conversion of the Class F Common or Preferred Stock;

(4) shares of Class A Common or Options issued to employees or directors of, or consultants or advisors to, the Company or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board;

(5) shares of Class A Common or Convertible Securities actually issued upon the exercise of Options or shares of Class A Common 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;

(6) shares of Class A Common, 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 the Board;

(7) shares of Class A Common, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another corporation by the Company 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;

(8) shares of Class A Common, 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 the Board; or

(9) shares of Class A Common issued or issuable upon conversion of Class F Common.

(b) “*Convertible Securities*” shall mean any evidences of indebtedness, shares or other securities directly or indirectly convertible into or exchangeable for Class A Common, but excluding Options.

(c) “*Option*” shall mean rights, options or warrants to subscribe for, purchase or otherwise acquire Class A Common or Convertible Securities.

(ii) No Adjustment of Conversion Price. No adjustment in the Conversion Price shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Company receives written notice from the Preferred Majority agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

(iii) Deemed Issue of Additional Shares of Common Stock.

(a) If the Company at any time or from time to time after the 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 Class A Common (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 the Conversion Price pursuant to the terms of Section 5(g)(iv), 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 Class A Common 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 Company 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 the 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 the Conversion Price pursuant to the terms of Section 5(g)(iv) (either because the consideration per share (determined pursuant to Section 5(h) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Conversion Price then in effect, or because such Option or Convertible Security was issued before the Original Issue Date), are revised after the 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 Class A Common issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Company 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 Section 5(g)(iii) 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 the Conversion Price pursuant to the terms of Section 5(g)(iv), 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 Class A Common issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the

consideration payable to the Company 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 Section 5(g)(iii) 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 Section 5(g)(iii)). If the number of shares of Class A Common issuable upon the exercise, conversion and/or exchange of any Option or Convertible Security, or the consideration payable to the Company 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 Section 5(g)(iii) 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.

(iv) Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock. In the event the Company shall at any time after the Original Issue Date issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 5(g)(iii)), 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:

$$CP2 = CP1 * (A + B) \div (A + C).$$

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

a) "CP2" shall mean the Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

b) "CP1" 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 Class A Common outstanding immediately prior to such issuance or deemed issuance of Additional Shares of Common Stock (treating for this purpose as outstanding all shares of Class A Common 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 and Class F Common) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issue);

d) "B" shall mean the number of shares of Class A Common 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 CP1 (determined by dividing the aggregate consideration received by the Company in respect of such issue by CP1); and

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

h. Determination of Consideration. For purposes of this Section 5, the consideration received by the Company for the issuance or deemed issuance of any Additional Shares of Common Stock shall be computed as follows:

(i) Cash and Property. Such consideration shall:

(a) insofar as it consists of cash, be computed at the aggregate amount of cash received by the Company, excluding amounts paid or payable for accrued interest;

(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; and

(c) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Company 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.

(ii) Options and Convertible Securities. The consideration per share received by the Company for Additional Shares of Common Stock deemed to have been issued pursuant to Section 5(g)(iii), relating to Options and Convertible Securities, shall be determined by dividing:

(a) The total amount, if any, received or receivable by the Company 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 Company 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

(b) the maximum number of shares of Class A Common (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.

i. **Multiple Closing Dates.** In the event the Company 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 Section 5(g)(iv), and such issuance dates occur within a period of no more than 90 days from the first such issuance to the final such issuance, then, upon the final such issuance, the 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).

j. **Notices of Record Date.** Upon (i) any taking by the Company of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend or other distribution, (ii) any Acquisition, Asset Transfer or other merger or consolidation or any sale or disposition, by the Company or any subsidiary, of substantially all of the assets of the Company and its subsidiaries taken as a whole or other capital reorganization of the Company, (iii) any reclassification or recapitalization of the capital stock of the Company, or (iv) any voluntary or involuntary dissolution, liquidation or winding up of the Company, the Company shall mail to each holder of Convertible Stock at least 20 days prior to (x) the record date, if any, specified therein; or (y) if no record date is specified, the date upon which such action is to take effect (or, in either case,

such shorter period approved by the holders of a majority of the outstanding Convertible Stock, voting together as a single class on an as-if-converted to Class A Common basis (other than with respect to the Class F Common)) a notice specifying (A) the date on which any such record is to be taken for the purpose of such dividend or distribution and a description of such dividend or distribution, (B) the date on which any such Acquisition, Asset Transfer, reorganization, reclassification, transfer, consolidation, merger, sale of substantially all assets, dissolution, liquidation or winding up is expected to become effective, and (C) the date, if any, that is to be fixed as to when the holders of record of Class A Common (or other securities) shall be entitled to exchange their shares of Class A Common (or other securities) for securities or other property deliverable upon such reorganization, reclassification, transfer, consolidation, merger, sale of substantially all assets, dissolution, liquidation or winding up.

k. Automatic Conversion.

(i) Each share of Convertible Stock shall automatically be converted into shares of Class A Common, based on the applicable then-effective Conversion Price, (A) with respect to the Preferred Stock, at any time upon the affirmative election of the holders of a Preferred Majority, voting together as a single class on an as-if-converted basis, (B) with respect to the Class F Common, at any time upon the affirmative election of the holders of a majority of the outstanding shares of the Class F Common, voting together as a single class, or (C) with respect to the Convertible Stock, immediately upon the closing of a firmly underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offer and sale of Class A Common for the account of the Company in which the gross cash proceeds to the Company (before underwriting discounts, commissions and fees) are at least \$40,000,000 (a “*Qualified IPO*”). Upon such automatic conversion, any declared and unpaid dividends shall be paid in accordance with the provisions of Section 5(c).

(ii) Any shares of Class F Common purchased by an investor of the Company in connection with an Equity Financing (as defined below) shall, subject to the approval of the Board, automatically be converted immediately prior to such transfer into shares of the series of Preferred Stock of the Company sold in the Equity Financing at the inverse ratio calculated after application of the Class F Common Conversion Rate such that the inverse of the ratio at which a share of Preferred Stock issued in such Equity Financing is convertible into Class A Common of the Company shall apply to determine the number of shares of Preferred Stock the Class F Common shall convert to (i.e. in the event that one share of Preferred Stock issued in the Equity Financing is convertible into two shares of Class A Common, the conversion ratio shall be one half with respect to each share of Class A Common the Class F Common converts to at the applicable Class F Common Conversion Rate); *provided* that such investor must purchase such shares of Class F Common for the same price as the shares of Preferred Stock sold in such Equity Financing with respect to each share of Preferred Stock such Class F Common converts to. Unless waived by all holders of Class F Common then outstanding, the Company shall provide a notice to each holder of Class F Common of an expected closing of an Equity Financing summarizing the material terms of such Equity Financing at least five (5) business days prior to the initial closing of such Equity Financing. For purposes of this Section, “*Equity Financing*” shall mean an equity financing of the Company in which the Company sells at least \$1,000,000 worth of a newly created series of Preferred Stock of the Company.

(iii) Any share of Class F Common Transferred, other than pursuant to Section 5(k)(ii) above shall automatically be converted immediately prior to such Transfer into shares of Class A Common at the then-effective Class F Common Conversion Rate. “*Transfer*” shall mean, with respect to shares of Class F Common, any sale, assignment, transfer, conveyance, hypothecation or other transfer or disposition of such share or any legal or beneficial interest in such share, whether or not for value and whether voluntary or involuntary or by operation of law.

(iv) (A) Upon the occurrence of any of the events specified in Section 5(k)(i)(B), 5(k)(i)(C), 5(k)(ii) or 5(k)(iii) above, the outstanding shares of Class F Common shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent and (B) upon the occurrence of any of the events specified in Section 5(k)(i)(A) or 5(k)(i)(C) above, the outstanding shares of Preferred Stock shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Company or its transfer agent; *provided, however*, that the Company shall not be obligated to issue certificates evidencing the shares of Class A Common issuable upon such conversion unless the certificates evidencing such shares of Preferred Stock or Class F Common, as applicable, are either delivered to the Company or its transfer agent as provided below, or the holder notifies the Company or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Company to indemnify the Company from any loss incurred by it in connection with such certificates. Upon the occurrence of such automatic conversion of the Preferred Stock or Class F Common, the holders of Preferred Stock or Class F Common, as applicable shall surrender the certificates representing such shares at the office of the Company or any transfer agent for the Preferred Stock or Class F Common, as applicable. Thereupon, there shall be issued and delivered to such holder promptly at such office and in its name as shown on such surrendered certificate or certificates, a certificate or certificates for the number of shares of Class A Common into which the shares of Preferred Stock or Class F Common surrendered were convertible on the date on which such automatic conversion occurred.

l. Fractional Shares. No fractional shares of Class A Common shall be issued upon conversion of the Convertible Stock. All shares of Class A Common (including fractions thereof) issuable upon conversion of more than one share of the Convertible Stock by a holder thereof shall be aggregated for purposes of determining whether the conversion would result in the issuance of any fractional share. If after the aforementioned aggregation the conversion would result in the issuance of any fractional share, the Company shall, in lieu of issuing any fractional share, pay cash equal to the product of such fraction multiplied by the fair market value of one share of Preferred Stock or Class A Common, as applicable, (as determined by the Board) on the date of conversion.

m. Reservation of Stock Issuable Upon Conversion. The Company shall, at all times when any Convertible Securities are outstanding, reserve and keep available out of its authorized but unissued shares of the Class A Common, solely for the purpose of effecting the conversion of the shares of the Convertible Stock, such number of its shares of Class A Common as shall from time to time be sufficient to effect the conversion of all outstanding shares of the Convertible Stock. If at any time the number of authorized but unissued shares of Class A Common shall not be sufficient to effect the conversion of all then outstanding shares of the Convertible Stock, the Company will take such corporate action as may be necessary to increase its authorized but unissued shares of Class A Common to such number of shares as shall be sufficient for such purpose.

n. Notices. Any notice required by the provisions of this Section 5 shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by electronic transmission in compliance with the provisions of the DGCL if sent during normal business hours of the recipient; if not, then on the next business day, (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with verification of receipt. All notices shall be addressed to each holder of record at the address of such holder appearing on the books of the Company.

o. Payment of Taxes. The Company will pay all taxes (other than taxes based upon income) and other governmental charges that may be imposed with respect to the issue or

delivery of shares of Class A Common upon conversion of shares of the Convertible Stock, excluding any tax or other charge imposed in connection with any transfer involved in the issue and delivery of shares of Class A Common in a name other than that in which the shares of Convertible Stock so converted were registered.

6. NO REISSUANCE OF CLASS F COMMON. Any shares or shares of Convertible Stock redeemed, purchased, converted or exchanged by the Company shall be cancelled and retired and shall not be reissued or transferred.

7. REDEMPTION. Except as set forth herein, the Common Stock and Preferred Stock is not redeemable at the option of the holder.

8. CERTAIN PROVISIONS APPLICABLE TO THE BHC INVESTOR. The Company shall not directly or indirectly repurchase, redeem, retire or otherwise acquire any of the Company's shares, or take any other action, if, as a result, a BHC Investor would own or control, or be deemed to own or control, collectively, greater than 33.33% of the total equity of the Company (as such term is defined and used, and as such percentage is calculated under the BHC Act); *provided, however*, that the foregoing restriction will not apply to any repurchases or redemptions to the extent the BHC Investor is permitted to participate on a pro rata basis, such that after such repurchase or redemption the BHC Investor's ownership of the Company's voting securities would not exceed such limitation above.

V.

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

A. The management of the business and the conduct of the affairs of the Company shall be vested in its Board. The number of directors that shall constitute the whole Board shall be fixed by the Board in the manner provided in the Bylaws, subject to any restrictions which may be set forth in this Certificate of Incorporation.

B. The Board is expressly empowered to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions that may be set forth in this Certificate of Incorporation. The stockholders shall also have the power to adopt, amend or repeal the Bylaws of the Company, subject to any restrictions that may be set forth in this Certificate of Incorporation.

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

D. Subject to any additional vote required by this Certificate of Incorporation, the number of directors of the Company shall be determined in the manner set forth in the Bylaws. Each director shall be entitled to one (1) vote on each matter presented to the Board.

VI.

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

B. To the fullest extent permitted by applicable law, the Company is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Company (and

any other persons to which applicable law permits the Company 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 such applicable law. If applicable law is amended after approval by the stockholders of this Article VI to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director to the Company shall be eliminated or limited to the fullest extent permitted by applicable law as so amended.

C. Any repeal or modification of this Article VI shall only be prospective and shall not affect the rights or protections or increase the liability of any director under this Article VI in effect at the time of the alleged occurrence of any act or omission to act giving rise to liability or indemnification.

VII.

A. In recognition and anticipation that (i) certain directors, principals, officers, employees and/or other representatives of the Specified Investors (as defined in the Company's Investors' Rights Agreement dated on or about the Original Issue Date) and their respective Affiliates (as defined below) may serve as directors, officers or agents of the Company, (ii) the Specified Investors and their respective Affiliates, directly or indirectly (including through companies in which the Specified Investors or their respective Affiliates is an equityholder, officer, director or affiliate), may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Company, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage, and (iii) members of the Board who are not directly paid employees of the Company ("*Non-Employee Directors*") and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Company, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Company, directly or indirectly, may engage, the provisions of this Article VII are set forth to regulate and define the conduct of certain affairs of the Company with respect to certain classes or categories of business opportunities as they may involve any of the Specified Investors, the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Company and its directors, officers and stockholders in connection therewith. For the avoidance of doubt, no person shall be deemed not to be a Non-Employee Director solely by virtue of the payment of a management fee by the Company to the Specified Investors or one or more their respective Affiliates.

B. None of (i) the Specified Investors or any of their respective Affiliates or (ii) any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Company, in either his or her director or officer capacities) or his or her Affiliates (the Persons (as defined below) identified in clause (i) through (iii) above being referred to, collectively, as "*Identified Persons*" and, each individually, as an "*Identified Person*") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Company or any of its Affiliates now engages or proposes to engage in or (2) otherwise competing with the Company or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law and in accordance with Section 122(17) of the DGCL, the Company hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Company or any of its Affiliates, except as provided in Section C of this Article VII. Subject to said Section C of this Article VII, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity

for itself, herself or himself and the Company or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Company or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Company or its stockholders or to any Affiliate of the Company for breach of any fiduciary duty or other duty (contractual or otherwise) as a stockholder, director or officer of the Company solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person, or does not present such corporate opportunity to the Company or any of its Affiliates.

C. The Company does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of the Company) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Company, and the provisions of Section B of this Article VII shall not apply to any such corporate opportunity.

D. In addition to and notwithstanding the foregoing provisions of this Article VII, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Company if it is a business opportunity that (i) the Company is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Company's business or is of no practical advantage to the Company, or (iii) is one in which the Company has no interest or reasonable expectancy.

E. For purposes of this Article VII, (i) "*Affiliate*" means (a) in respect of a Person, any Person that, directly or indirectly, is controlled by such Person, controls such Person, or is under common control with such Person, and shall include any principal, member, director, partner, stockholder, officer, employee or other representative of any of the foregoing (other than the Company and any entity that is controlled by the Company), (b) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Company and any entity that is controlled by the Company) and (c) in respect of the Company, any Person that, directly or indirectly, is controlled by the Company; and (ii) "*Person*" means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

F. To the fullest extent permitted by law, any Person holding, purchasing or otherwise acquiring any interest in any shares of capital stock of the Company shall be deemed to have notice of and to have consented to the provisions of this Article VII.

G. Neither the amendment, change, alteration nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation or the Bylaws of the Company, nor, to the fullest extent permitted by DGCL, any modification of law, shall eliminate or reduce the effect of this Article VII or the rights or any protection afforded under this Article VII in respect of any corporate opportunity that an Identified Person acquires knowledge of prior to such amendment, repeal, adoption or modification.

VIII.

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 Certificate of Incorporation from employees, officers, directors or consultants of the Company in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this 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).

IX.

The Company reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon the stockholders herein are granted subject to this reservation.

X.

Unless the Company 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 Company, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Company to the Company or the Company’s stockholders, (iii) any action asserting a claim against the Company, its directors, officers or employees arising pursuant to any provision of the DGCL or the Company’s Certificate of Incorporation or Bylaws or (iv) any action asserting a claim against the Company, 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 X 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 X (including, without limitation, each portion of any sentence of this Article X containing any such provision 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.

* * * *

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

FIVE: This Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of said corporation in accordance with Section 228 of the DGCL. This Amended and Restated Certificate of Incorporation has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL by the stockholders of the Company.

[Remainder of this page intentionally left blank]

IN WITNESS WHEREOF, Big Bear Labs, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its Chief Executive Officer on December 7, 2022.

/s/ Vijay Menon

Vijay Menon
Chief Executive Officer