



Does your Organization expend \$750,000 or more a year in federal funds? Y  or N

Number of paid staff:

Number of volunteers:

Members/Board of Directors (*Attach*):

**III. PROJECT ACTIVITY**

A. Name of Project:

B. Specific Location of Project

*(Attach Project Map - include street address; if a street address has not been assigned provide APN)*

Street or APN:

City:

Zip Code:

C. CDBG Funds Requested:

*(total amount for the project only)*

D. Where will the proposed activity occur (be specific as to the geographic boundaries)? If the project involves a new or existing facility, what is the proposed service/benefit area for the facility?

E. In which City (ies)/Communities does the activity occur?

City (ies):

Community (ies):

*NOTE: HWS will make the final determination of the appropriate service area of all proposals.*

F. If this project benefits residents of more than one community or jurisdiction, have requests been submitted to those other entitlement jurisdictions? (i.e., County district(s) 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and/or 5<sup>th</sup>, City of Palm Springs, City of Moreno Valley, City of Riverside, etc.)

G. Check **ONLY** the applicable category your application represents.

- Public Service
- Homeless Activities
- Real Property Acquisition (Must consult with HWS prior to submitting application)
- Housing
- Rehabilitation/Preservation (please provide picture of structure) Public
- Facilities (construction)
- Infrastructure (i.e. Streets, Sewer, Sidewalk, etc.)
- Other: (provide description) \_\_\_\_\_

H. Respond to A & B **only** if this application is for a ***public service*** project.

(a) Is this a NEW service provided by your agency? Yes  No

(b) If service is not new, will the existing public service activity level be substantially increased or improved?

#### IV. PROJECT NARRATIVE

A. Provide a detailed Project Description. The description should only address or discuss the specific activities, services, or project that is to be assisted with CDBG funds. If CDBG funds will assist the entire program or activity, then provide a description of the entire program or activity:

B. Provide a detailed description of the proposed use of the CDBG funds only (e.g. client scholarships, purchase of specific equipment, rent, supplies, utilities, salaries, etc.):

C. What are the goals and objectives of the project, service, or activity? How will you measure and evaluate the success of the project to meet these goals and objectives (measures should be qualitative)?

D. Please identify the project milestones using an Estimated Timeline for Project Implementation:

V. PROJECT BENEFIT

A. Indicate the number of people or households that will directly benefit from your proposal using CDBG funds: *Note: This is based on the expected number of clients to be served if the County funds your project for the requested amount.*

B. Indicate the number of unduplicated clients that will be served (*An unduplicated client is counted only once, no matter how many direct services the client receives during a funding year*):

C. Length of proposed CDBG-funded activities or service (weeks, months, year):

D. Service will be provided to (check one or more):

Men

Women

Children (Range of children's ages : \_\_\_\_\_)

Homeless (Number of beds at facility : \_\_\_\_\_)

Seniors

Severely Disabled Adults

Migrant Farm Workers

Families

E. What methods will be used for community involvement to assure that all who might benefit from the project are provided an opportunity to participate?

F. What evidence is there of a long-term commitment to the proposal? Describe how you plan to continue the work (project) after the CDBG funds are expended?

**VI. National Objective**

**All CDBG-funded activities must meet at least one of the following National Objectives of the CDBG program. Indicate the category of National Objective to be met by your activity.**

**CATEGORY A: Benefit to low-moderate income persons (must be documented).** Please choose either subcategory 1 or 2:

1. Limited Clientele:

The project serves clientele that will provide documentation of their family size, income, and ethnicity. Identify the procedure you currently have in place to document that at least 51% of the clientele you serve are low-moderate income persons.

2. Clientele presumed to be principally low- and moderate-income persons:  
The following groups are presumed by HUD to meet this criterion. You will be required to submit a certification from the client (s) that they fall into one of the following presumed categories.

The activity will benefit (check one or more)

- |   |   |
|---|---|
| <input type="checkbox"/> Abused children          | <input type="checkbox"/> Homeless persons         |
| <input type="checkbox"/> Battered spouses         | <input type="checkbox"/> Illiterate adults        |
| <input type="checkbox"/> Elderly persons          | <input type="checkbox"/> Persons living with AIDS |
| <input type="checkbox"/> Severely disabled adults | <input type="checkbox"/> Migrant Farm workers     |

- a. Describe the clientele above to be served by this activity:

- b. Discuss how this project directly benefits low- and moderate- income residents:

**CATEGORY B: Area Benefit - The project or facility serves, or is available to, ALL persons located within an area where at least 51% of the residents are low/moderate-income. (Applicant is welcome to contact a County of Riverside, HWS CDBG Program Manager for Census Information)**

2020 Census Tract and Block Group numbers:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Total population in Census Tract(s) / block group(s): \_\_\_\_\_

Total percentage of low-moderate population in Census Tract(s) / block group(s): \_\_\_\_\_

**CATEGORY C: Activities undertaken to create or retain permanent jobs, at least 51% of which will be made available to or held by low/moderate-income persons.**

**Proposed Job Creation/Retention**

Total Jobs Expected to Create:

Total Jobs Expected to Retain:

**CATEGORY D: Activities that provide assistance to micro-enterprise owners/developers who are low/moderate-income.**

**Proposed Assistance to Businesses**

New Businesses expected to assist:

Existing Businesses expected to assist:

Enter Total Businesses expected to assist:

**VII. FINANCIAL INFORMATION**

**A. Proposed Project Budget**

Complete the following annual program budget to begin July 1, 2025. If your proposed CDBG-funded activity will start on a date other than July 1, 2025, please indicate starting date. Provide total Budget information and distribution of CDBG funds in the proposed budget.

The budgeted items are for the specific activity for which you are requesting CDBG funding - NOT for the budget of the “entire” organization or agency. (Note: CDBG funds requested must match amount requested in Project Activity, C above.)

*(EXAMPLE: The Valley Senior Center is requesting funding for a new Senior Nutritional Program. The total cost of the program is \$15,000 and \$10,000 in CDBG funds is being requested for operating expenses associated with the proposed activity. The total Activity/Project Budget will include \$5,000 of other non-CDBG funding and \$10,000 in CDBG funds for a Grand Total of \$15,000).*

	<b>TOTAL ACTIVITY/ PROJECT BUDGET (Include non-CDBG Funds and CDBG Funds)</b>	<b>CDBG FUNDS REQUESTED-Only</b>
I. Personnel		
A. Salaries & Wages	\$	\$
B. Fringe Benefits	\$	\$
C. Consultants & Contract Services	\$	\$
<b>PERSONNEL SUB-TOTAL</b>	<b>\$</b>	<b>\$</b>



II. Non-Personnel		
A. Space Costs	\$	\$
B. Rental, Lease or Purchase of Equipment	\$	\$
C. Consumable Supplies	\$	\$
D. Travel	\$	\$
E. Telephone	\$	\$
F. Utilities	\$	\$
G. Other Costs	\$	\$
<b>NON-PERSONNEL SUB-TOTAL:</b>	<b>\$</b>	<b>\$</b>
III. Other		
A. Architectural/Engineering Design	\$	\$
B. Acquisition of Real Property	\$	\$
C. Construction/Rehabilitation	\$	\$
D. Indirect Costs	\$	\$
E. Other	\$	\$
<b>OTHER SUB-TOTAL:</b>	<b>\$</b>	<b>\$</b>
<b>GRAND TOTAL:</b>	<b>\$</b>	<b>\$</b>

**NOTE: The BOOST program can be scaled up or down; its operation is not dependent on full award funding and can be adjusted to the desired amount of coverage for the proposed area. If it were to be phased in or partially funded, an appropriate number of child care providers would be accepted into the program at a cost of \$8000 per daycare.**

B. Leveraging

List other funding sources and amounts (commitments or applications) which will assist in the implementation of this activity. Current and pending evidence of leveraging commitments/applications must be submitted with application. **(Attach)**

Federal:

State/Local:

Private:

Fees:

Donations:

Other:

C. What type of long-term financial commitment is there to the proposal? Describe how you plan to continue the work (project) after the CDBG funds are expended?

D. Provide a summary by line item of your organization's previous year's income and expense statement. **(Attach)**

E. Does this project benefit residents of more than one community or jurisdiction, have requests been submitted to those other jurisdictions? Yes  No

If yes, identify sources and indicate outcome.

If no, please explain.

F. Was this project or activity previously funded with CDBG? Yes  No

If yes, when?

Is this activity a continuation of a previously funded (CDBG) project? Yes  No

If yes, explain:

## VIII. MANAGEMENT CAPACITY

A. Describe your organization's experience in managing and operating project or activities funded with CDBG or other Federal funds.

B. Management Systems

Does your organization have written and adopted management systems (i.e., policies and procedures) including personnel, procurement, property management, record keeping, financial management, etc.?

C. Capacity

Please provide the names and qualifications of the person(s) that will be primarily responsible for the implementation and completion of the proposed project.

Our team's diverse skills and experience underscore Upwards' capacity to successfully complete the project on time and within budget, with each member's responsibilities complementing one another for a cohesive and efficient approach.



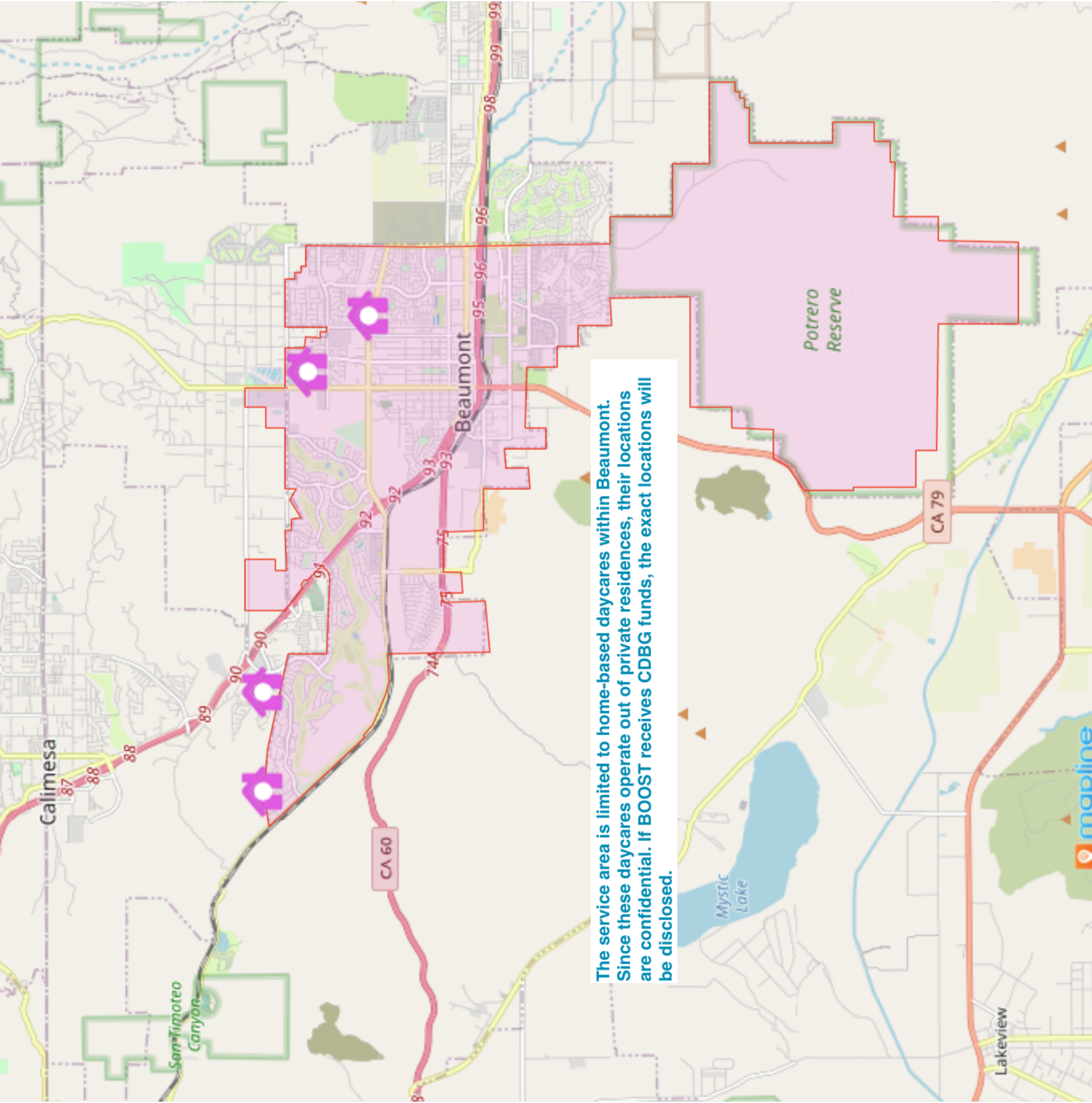
**CHECK-LIST:**

The following required documents listed below have been attached. Any missing documentation to the application will be cause for the application to be reviewed as INELIGIBLE.

Yes	No	ATTACHMENT
<input type="checkbox"/>	<input type="checkbox"/>	1. Members/Board of Directors
<input type="checkbox"/>	<input type="checkbox"/>	2. Articles of Incorporation and Bylaws
<input type="checkbox"/>	<input type="checkbox"/>	3. Project Activity Map
<input type="checkbox"/>	<input type="checkbox"/>	4. Project Benefit, Category B, Low Mod Area Maps ( <b>Attach if applicable</b> )
<input type="checkbox"/>	<input type="checkbox"/>	5. Leveraging (Current evidence of commitment)
<input type="checkbox"/>	<input type="checkbox"/>	6. Income and Expense Statement
<input type="checkbox"/>	<input type="checkbox"/>	7. Management Capacity (Detailed organizational chart)
<input type="checkbox"/>	<input type="checkbox"/>	8. Board Written Authorization approving submission of application

### Upwards' Board of Directors

	Name & Address	Position	Profession/ Affiliation	Term Start Date	Term End Date
	<p><b>Jessica Chang</b>            Address: C/O Upwards, Inc.            4223 Glencoe Ave, Ste C125            Marina Del Rey, CA 90292</p>	<p>President,            Secretary,            Treasurer</p>	<p>CEO of            Upwards</p>	<p>Sept 2017</p>	<p>N/A</p>
	<p><b>Anna Barber</b>            Address: C/O Upwards, Inc.            4223 Glencoe Ave, Ste C125            Marina Del Rey, CA 90292</p>	<p>Director</p>	<p>Partner at            M13</p>	<p>Feb 2022</p>	<p>N/A</p>
	<p><b>Jesse Forrest</b>            Address: C/O Upwards, Inc.            4223 Glencoe Ave, Ste C125            Marina Del Rey, CA 90292</p>	<p>Director</p>	<p>CTO of            Upwards</p>	<p>Sept 2017</p>	<p>N/A</p>
	<p><b>Richard Kerby</b>            Address: C/O Upwards, Inc.            4223 Glencoe Ave, Ste C125            Marina Del Rey, CA 90292</p>	<p>Director</p>	<p>Co-Founder            of Equal            Ventures</p>	<p>Feb 2021</p>	<p>N/A</p>



The service area is limited to home-based daycares within Beaumont. Since these daycares operate out of private residences, their locations are confidential. If BOOST receives CDBG funds, the exact locations will be disclosed.

## BUDGET NARRATIVE AND LEVERAGED FUNDS

CDBG funding supports the compensation of 10 staff members directly involved in the administration, coordination, and delivery of the BOOST program. The BOOST team includes: Program Director, Provider Care Specialist, Family Care Specialist, Enrollment Specialist, Finance Specialist, Product and Technical Support, Communications and Education and Community Engagement Specialist. These personnel are essential for the development of training materials, conducting workshops, and offering ongoing support to the child care providers and the families they serve.

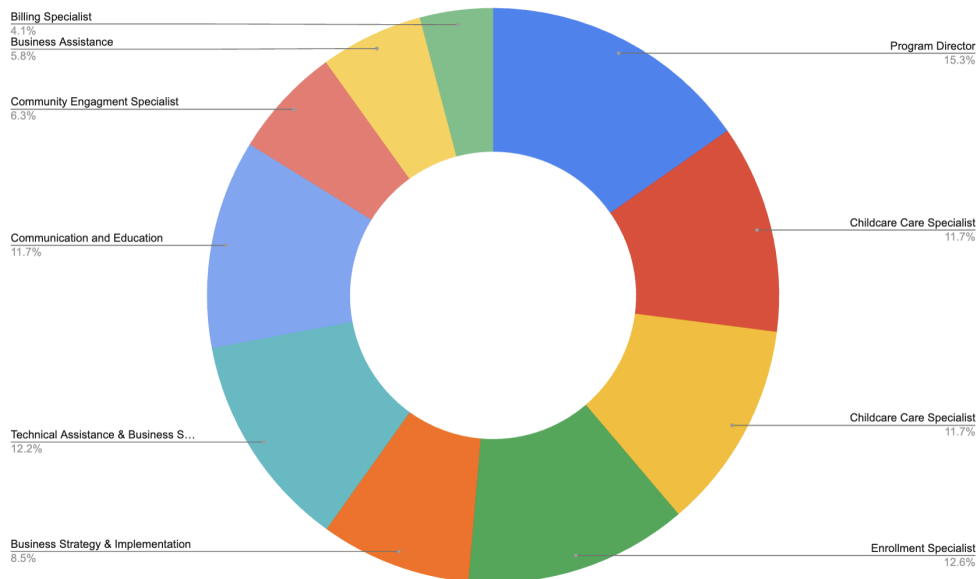
### BOOST Program Budget

Program Budget	Source		Program
	CDBG	Upwards	Total
<b>Personnel</b>			
Salary	\$ 47,280		\$47,280
Fringe	\$ 720	\$ -	\$720
<b>Personnel Total</b>	<b>\$ 48,000</b>	<b>\$ -</b>	<b>\$48,000</b>
<b>Non-Personnel</b>			
Training Materials	\$ -	2,880.00	\$ 2,880
Equipment	\$ -	1,920.00	\$ 1,920
Marketing for Providers	\$ -	2,316.00	\$ 2,316
Marketing for Families for Providers	\$ -	480.00	\$ 480
Cost of Payments	\$ -	2,224.00	\$ 2,224
Technology Cost	\$ -	300.16	\$ 300
Office Supplies - Program	\$ -	96.00	\$ 96
<b>Non-Personnel Total</b>	<b>\$ -</b>	<b>\$ 10,216</b>	<b>\$10,216</b>
<b>Grand Total</b>	<b>\$48,000</b>	<b>\$10,216</b>	<b>\$58,216</b>
	CDBG	Upwards	Total

Upwards' own contributions to the program will cover all non-personnel costs including Training Materials (and translations), Equipment, Marketing for Providers, Marketing for Families, Cost of Payments, Technology Costs and Office Supplies. Upwards' substantial in-kind contributions and operational support underscore our dedication to providing the necessary resources for the program's success.



Upwards uses time-tracking software to reliably record each program staff member's time for accurate invoicing. Their roles are clearly defined and directly related to the program. All of these costs are deemed allowable according to HUD's Playing by the Rules Handbook. The allocation of CDBG funds primarily towards personnel costs demonstrates our commitment to leveraging skilled staff to achieve the program's objectives.



Our team's diverse skills and comprehensive experience underscore Upwards' capacity to undertake and complete the proposed project within the proposed timeline and budget. Each member's role and responsibilities are designed to complement one another, creating a cohesive and efficient team poised for success.

**The BOOST program can be scaled up or down. Its operation is not dependent on full award funding and can be adjusted to the desired amount of coverage for the area. If BOOST were to be phased in or partially funded, an appropriate number of child care providers would be accepted into the program at a cost of \$8000 per provider.**

\* Number of Jobs Created calculated at 30% of daycares hiring a teaching assistant

	100% Coverage	75% Coverage	50% Coverage
Number of Microenterprise Daycares Assisted	6	5	3
Number of LMI Jobs Created*	2	1-2	1
Funding Needed	\$48,000	\$40,000	\$24,000



**Attachment E - Board Resolution**

**ACTION BY UNANIMOUS WRITTEN CONSENT  
OF THE BOARD OF DIRECTORS OF  
WEECARE, Inc.  
(a Delaware corporation)**

Pursuant to Section 141(f) of the Delaware General Corporation Law (“**DGCL**”), the undersigned, being all of the members of the Board of Directors (the “**Board**”) of WeeCare, Inc., a Delaware corporation (the “**Corporation**”), hereby adopt and approve the following resolutions by unanimous written consent without a meeting effective as of the date on which the Corporation receives the last signature hereto (unless otherwise noted in the resolutions):

**1. Approval of Application Submissions**

**WHEREAS**, the Corporation desires to submit certain applications to government entities, where such applications are listed on Exhibit A hereto (the “**Government Application Submissions**”).

**NOW, THEREFORE, BE IT RESOLVED**, the Government Application Submissions are hereby approved and adopted (together with any changes thereto which the officers of the Corporation approve, such approval being conclusively evidenced by any officer’s signature thereto), and officers of the Corporation are hereby authorized to enter into and deliver Government Application Submissions, and to cause the Corporation to perform its obligations thereunder.

**RESOLVED FURTHER**, that the officers of the Corporation be, and each of them hereby is, authorized, empowered and directed to do and perform any and all other acts and deeds that they (or any one of them) may deem necessary or appropriate to carry out and give effect to the foregoing resolutions.

**[Remainder of Page Intentionally Left Blank]**

*Anna Barber*

**Anna Barber** .....

[anna@m13.co](mailto:anna@m13.co)

Board director

10/11/2024 at 03:57PM PDT

*Jesse Forrest*

**Jesse Forrest** .....

[jesse@weecare.co](mailto:jesse@weecare.co) Board

director

10/11/2024 at 03:57PM PDT

*Jessica Chang*

**Jessica Chang**

[jessica@weecare.co](mailto:jessica@weecare.co) Board  
director

10/11/2024 at 03:57PM PDT

*Richard Kerby*

**Richard Kerby**

[kerby@equal.vc](mailto:kerby@equal.vc)

Board director

10/11/2024 at 03:57PM PDT

**EXHIBIT A-3**

**GOVERNMENT APPLICATION SUBMISSIONS**

- City of Beaumont, CA



**WeeCare, Inc. dba Upwards**  
5521 N University Dr, Suite 104  
Coral Springs, FL 33067  
(323) 421-7479  
[upwards.com](http://upwards.com)

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To Whom It May Concern,

The purpose of this letter is to provide context for the financial standing of WeeCare, Inc dba Upwards, as it may be different from other companies generally participating in the industry. We hope that this context helps support your consideration of our company as we submit a proposal for service.

As is typical of a high-growth, venture-backed, for-profit organization, Upwards is growing in - and investing in - operational scale, which expands operating expenses to accommodate for revenue growth. **Exhibit A reflects this trajectory from \$6.4M to \$15.2M in Revenue over three years, which represent +60% and +49% YoY increases.**

To maintain a strong financial position in a situation where the company is increasing expenses for downstream growth (lowering cash flow from operations), Upwards has raised equity rounds of financing from some of the most reputable venture firms in the technology space (elevating cash flow from financing). **Exhibit B reflects Liquidity Ratios that would be considered healthy by any measure; from the basic Current Ratio to the most stringent Cash Ratio.** And, as you may be aware, [Upwards recently closed a \\$21M Series B round](#) to further bolster our cash position.

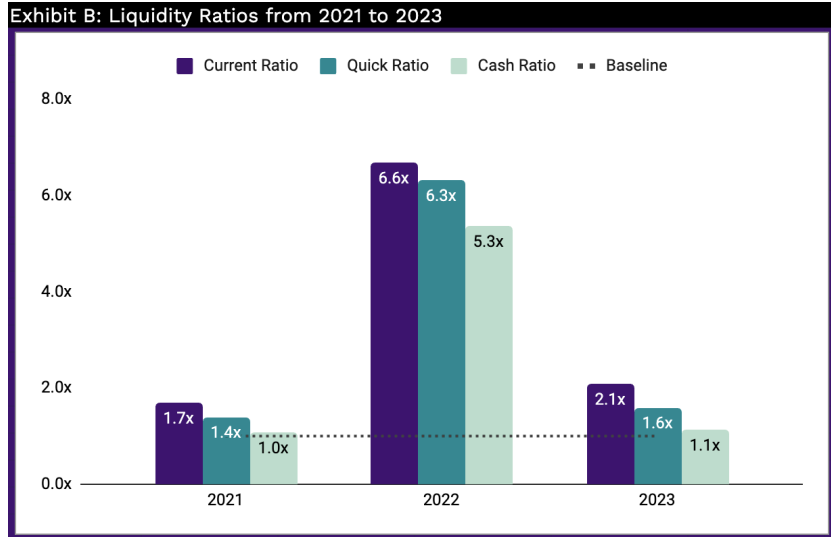
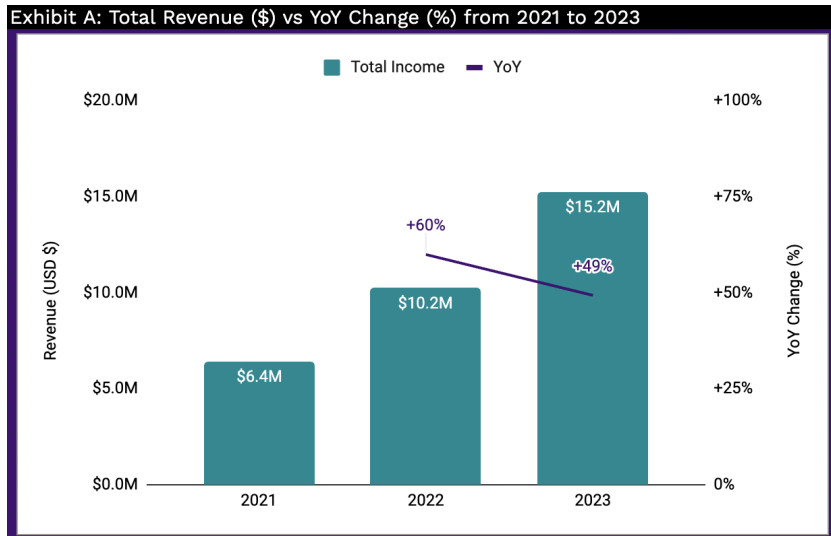
We hope this short memo provides context on our financial standing. To be sure, our financial strategy is reflective of our mission: to Solve Care for Good. To do so, Upwards continues to execute on our high-growth plan, and continues to submit proposals such as this, so that we can grow the imprint of our impact, alongside partners like you.

Please feel free to reach out if you have any questions. We are excited at the opportunity to work with you and are open to discuss any inquiries you may have.

Sincerely,

Johnny Chan  
COO/CFO  
[johnny@upwards.com](mailto:johnny@upwards.com)

*Exhibits to follow on Page 2*



**Note: Upwards' Series B was closed in January 2024, and is not reflected in these exhibits.**

-END OF DOCUMENT-

# Management Report

WeeCare, Inc.

For the period ended June 30, 2023

Prepared on

**July 31, 2023**



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# Profit and Loss

June 2023

	<b>Total</b>
<b>INCOME</b>	
Corporate Benefit revenue	179,873.12
Fever Free Revenue	0.00
Programs Service Income	68,129.00
Service Fee - Income	868,524.90
z-Chargebacks	-542.22
<b>Total Income</b>	<b>1,115,984.80</b>
<b>COST OF GOODS SOLD</b>	
Background Checks	3,000.69
Cost of Goods Sold	6,137.10
Daycare Insurance Costs	230.00
Merchant Account Fees	3,959.56
Stipend payout - CB	45,152.11
Tuition Payout	838,404.17
<b>Total Cost of Goods Sold</b>	<b>896,883.63</b>
<b>GROSS PROFIT</b>	<b>219,101.17</b>
<b>EXPENSES</b>	
Advertising/Promotional	771.82
Bank Charges & Fees	1,229.84
Dues & subscriptions	6,608.30
Employee Benefits	35,828.96
Employer Taxes	45,832.47
Gifts	98.65
HR service fees	8,881.82
Insurance	7,868.73
Legal & Professional Services	994.95
Meals	2,959.84
Office Expenses	10,952.74
Office Supplies & Software	1,186.28
Outside Services	51,006.70
Postage and Delivery	21.25
Professional Development	303.65
Rent & Lease	4,955.99
Taxes & Licenses	428.41
Technology services	49,633.14
Travel	4,602.58
Wages and Salaries	643,279.67
<b>Total Expenses</b>	<b>877,445.79</b>
<b>NET OPERATING INCOME</b>	<b>-658,344.62</b>
<b>OTHER INCOME</b>	
Gain or (Loss) on Disposal of Assets	-1,768.02

	<b>Total</b>
Interest Income	3,629.96
<b>Total Other Income</b>	<b>1,861.94</b>
<b>OTHER EXPENSES</b>	
Amortization	1,402.52
Depreciation	1,107.30
<b>Total Other Expenses</b>	<b>2,509.82</b>
<b>NET OTHER INCOME</b>	<b>-647.88</b>
<b>NET INCOME</b>	<b>\$ -658,992.50</b>

# Balance Sheet

As of June 30, 2023

	<b>Total</b>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Bank Accounts</b>	
Chase - Checking 6756	0.00
First Republic - Checking 8054	980,969.38
First Republic - MM 0211	7,236.18
FRB- ICS Sweep Account	2,875,125.24
Stripe	284,815.36
<b>Total Bank Accounts</b>	<b>4,148,146.16</b>
<b>Accounts Receivable</b>	
Accounts Receivable (A/R)	449,318.53
<b>Total Accounts Receivable</b>	<b>449,318.53</b>
<b>Other Current Assets</b>	
Accrued Revenue	168,766.00
Clearing Account - Admin	0.00
Deferred Taxes - R & D Credit	87,681.00
Escrow Accounts - Backup Credits	347,697.30
Payroll Clearing	3,613.92
Prepaid Expenses	102,571.26
Refundable Taxes	35,330.64
Subsidiary Receivable	161,859.60
Uncategorized Asset	0.00
Undeposited Funds	26,500.00
<b>Total Other Current Assets</b>	<b>934,019.72</b>
<b>Total Current Assets</b>	<b>5,531,484.41</b>
<b>Fixed Assets</b>	
Computers	175,500.96
Furniture & Fixtures	0.00
Office Equipment	0.00
z-Accumulated Depreciation	-41,078.32
<b>Total Fixed Assets</b>	<b>134,422.64</b>
<b>Other Assets</b>	
Deposits	12,100.00
Intangible Assets	129,347.87
<b>Total Other Assets</b>	<b>141,447.87</b>
<b>TOTAL ASSETS</b>	<b>\$5,807,354.92</b>

## LIABILITIES AND EQUITY

### Liabilities

#### Current Liabilities

	<b>Total</b>
<b>Accounts Payable</b>	
Accounts Payable (A/P)	34,157.00
<b>Total Accounts Payable</b>	<b>34,157.00</b>
<b>Credit Cards</b>	
Brex	4,388.18
Jesse Forrest 1237	0.00
Jessica Chang 7487	872.80
Matt Reilly 2750	181.75
<b>Total Credit Cards</b>	<b>5,442.73</b>
<b>Other Current Liabilities</b>	
Accrued Expenses	203,246.98
Deferred Income	1,296,131.57
Due to Employees	208.53
Due to MainStreet - R & D Credit	0.00
Employer Benefit Liabilities	0.00
Payroll Tax Payable	86.86
Tax deferral	0.00
<b>Total Other Current Liabilities</b>	<b>1,499,673.94</b>
<b>Total Current Liabilities</b>	<b>1,539,273.67</b>
<b>Long-Term Liabilities</b>	
SAFE 2 NOTE	0.00
SAFE Notes Payable	0.00
SBA PPP Loan	0.00
<b>Total Long-Term Liabilities</b>	<b>0.00</b>
<b>Total Liabilities</b>	<b>1,539,273.67</b>
<b>Equity</b>	
Common Stock	5,230.54
Opening Balance Equity	0.00
Owner's Pay & Personal Expenses	0.00
Preferred Stock	22,131,491.46
Prior Period Adjustment	451,700.62
Retained Earnings	-14,768,186.66
Net Income	-3,552,154.71
<b>Total Equity</b>	<b>4,268,081.25</b>
<b>TOTAL LIABILITIES AND EQUITY</b>	<b>\$5,807,354.92</b>

# Statement of Cash Flows

June 2023

	<b>Total</b>
<b>OPERATING ACTIVITIES</b>	
Net Income	-658,992.50
Adjustments to reconcile Net Income to Net Cash provided by operations:	
Accounts Receivable (A/R)	-112,330.78
Accrued Revenue	-68,129.00
Escrow Accounts - Backup Credits	-23,365.62
Payroll Clearing	-3,613.92
Prepaid Expenses	3,174.68
Subsidiary Receivable	-63,578.92
z-Accumulated Depreciation	327.92
Intangible Assets:z-Accumulated Amortization	1,402.52
Accounts Payable (A/P)	-43,020.59
Brex	-4,675.78
Jessica Chang 7487	593.37
Matt Reilly 2750	41.76
Accrued Expenses	-2,944.64
Accrued Expenses:Accrued Payroll	-221,637.67
Deferred Income:Corp Benefits Advance Payments	96,354.62
<b>Total Adjustments to reconcile Net Income to Net Cash provided by operations:</b>	<b>-441,402.05</b>
<b>Net cash provided by operating activities</b>	<b>-1,100,394.55</b>
<b>INVESTING ACTIVITIES</b>	
Computers	-2,490.05
<b>Net cash provided by investing activities</b>	<b>-2,490.05</b>
<b>FINANCING ACTIVITIES</b>	
Common Stock	393.66
Prior Period Adjustment	-2,554.38
<b>Net cash provided by financing activities</b>	<b>-2,160.72</b>
<b>NET CASH INCREASE FOR PERIOD</b>	<b>-1,105,045.32</b>
Cash at beginning of period	5,279,691.48

	<b>Total</b>
CASH AT END OF PERIOD	<b>\$4,174,646.16</b>

# Delaware

## The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "WEECARE, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE SECOND DAY OF MARCH, A.D. 2023.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "WEECARE, INC." WAS INCORPORATED ON THE FIRST DAY OF AUGUST, A.D. 2017.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



  
Jeffrey W. Bullock, Secretary of State

6498925 8300

SR# 20230845184

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

Authentication: 202822516

Date: 03-02-23



**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
WEECARE, INC.**

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

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

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is WeeCare, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on August 1, 2017.

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

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

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

**SECOND:** The address of the registered office of the Corporation in the State of Delaware is 2140 S. Dupont HWY the City of Camden, County of Kent, Delaware 19934. The name of its registered agent at such address is Paracorp Incorporated.

**THIRD:** The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law.

**FOURTH:** The total number of shares of all classes of stock which the Corporation shall have authority to issue is (i) 42,358,000 shares of Common Stock, \$0.0001 par value per share (“*Common Stock*”) and (ii) 22,440,587 shares of Preferred Stock, \$0.0001 par value per share (“*Preferred Stock*”). As of the effective date of this Amended and Restated Certificate of Incorporation, 8,674,643 shares of the authorized Preferred Stock of the Corporation are hereby designated “*Series Seed Preferred Stock*”, 9,822,920 shares of the authorized Preferred Stock of the Corporation are hereby designated “*Series A-1 Preferred Stock*”, 760,571 shares of the authorized Preferred Stock of the corporation are hereby designated “*Series A-2 Preferred Stock*”, and 3,182,453 shares of the authorized Preferred Stock of the corporation are hereby designated “*Series A-3 Preferred Stock*” (together with the Series A-1 Preferred Stock and Series A-2 Preferred Stock, the “*Series A Preferred Stock*”), in each case with the following rights, preferences, powers, privileges and restrictions, qualifications and limitations. Unless otherwise indicated, references to “sections” or “subsections” in this Part B of this Article Fourth refer to sections and subsections of Part B of this Article Fourth.

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

## A. COMMON STOCK

1. **General.** The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights, powers and preferences of the holders of the Preferred Stock set forth herein.

2. **Voting.** The holders of the Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings). There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of this Amended and Restated Certificate of Incorporation) the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law and without a separate class vote of the holders of the Common Stock.

## B. PREFERRED STOCK

1. **Dividends.** The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock of the Corporation (other than dividends on shares of Common Stock payable in shares of Common Stock) unless (in addition to the obtaining of any consents required elsewhere in this Amended and Restated Certificate of Incorporation) the holders of the Preferred Stock then outstanding shall first receive, or simultaneously receive, a dividend on each outstanding share of Preferred Stock in an amount at least equal to (i) in the case of a dividend on Common Stock or any class or series that is convertible into Common Stock, that dividend per share of Preferred Stock as would equal the product of (A) the dividend payable on each share of such class or series determined, if applicable, as if all shares of such class or series had been converted into Common Stock and (B) the number of shares of Common Stock issuable upon conversion of a share of Preferred Stock, in each case calculated on the record date for determination of holders entitled to receive such dividend or (ii) in the case of a dividend on any class or series that is not convertible into Common Stock, at a rate per share of Preferred Stock determined by (A) dividing the amount of the dividend payable on each share of such class or series of capital stock by the original issuance price of such class or series of capital stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such class or series) and (B) multiplying such fraction by an amount equal to the Original Issue Price (as defined below) for the Preferred Stock; *provided* that, if the Corporation declares, pays or sets aside, on the same date, a dividend on shares of more than one class or series of capital stock of the Corporation, the dividend payable to the holders of Preferred Stock pursuant to this Section 1 shall be calculated based upon the dividend on the class or series of capital stock that would result in the highest Preferred Stock dividend. The “*Original Issue Price*” shall mean \$0.7263 per share with respect to the Series Seed Preferred Stock, \$1.4909 per share with respect to the Series A-1 Preferred Stock, \$0.6574 per share with respect to the Series A-2 Preferred Stock and \$0.6284 per share with respect to the Series A-3 Preferred Stock, in each case, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to such series of Preferred Stock.

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

2.1 **Preferential Payments to Holders of Preferred Stock.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of each series of Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event

(as defined below), the holders of shares of each series 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 Original Issue Price of such series of Preferred Stock, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of such Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (the amount payable pursuant to this sentence being hereinafter referred to as the “**Liquidation Amount**” for such series of Preferred Stock). If, upon any such liquidation, dissolution or winding up of the Corporation or Deemed Liquidation Event, the assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of shares of Preferred Stock the full amount to which they shall be entitled under this Section 2.1, the holders of such shares 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.

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

### **2.3 Deemed Liquidation Events.**

**2.3.1 Definition.** Each of the following events shall be considered a “**Deemed Liquidation Event**” unless the holders of a majority of the outstanding shares of Preferred Stock, including a majority of the Series A Preferred Stock, voting together as a single class on an as converted basis (the “**Requisite Holders**”), elect otherwise by written notice sent to the Corporation at least 10 days prior to the effective date of any such event:

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

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

- (b) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole or the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction

or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale, lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation;

(c) the closing of the transfer (whether by merger, consolidation or otherwise), in a single transaction or series of related transactions in which the Corporation is a constituent party, to a person or group of affiliated persons (other than an underwriter of the Corporation's securities), of the Corporation's securities if, after such closing, such person or group of affiliated persons would hold 50% or more of the outstanding voting stock of the Corporation (or the surviving or acquiring entity); provided that the sale of the Corporation's securities in a bona fide financing transaction shall not be a Deemed Liquidation Event; or

(d) the grant to a single entity (or group of affiliated entities) of an exclusive, irrevocable license to all or substantially all of this Corporation's intellectual property that is used to generate all or substantially all of this Corporation's revenues.

### **2.3.2 Effecting a Deemed Liquidation Event.**

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

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

2.3.2(b), the Corporation shall not expend or dissipate the consideration received for such Deemed Liquidation Event, except to discharge expenses incurred in connection with such Deemed Liquidation Event or in the ordinary course of business. The following provisions shall apply to any redemption of the Preferred Stock pursuant to this Section 2.3.2(b):

(i) Within a reasonable time prior to any date shares of Preferred Stock are to be redeemed (each a “*Redemption Date*”), the Corporation shall send written notice of redemption (the “*Redemption Notice*”) to each holder of record of Preferred Stock. Each Redemption Notice shall state (A) the number of shares of each series of Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date and (B) for holders of shares in certificated form, that the holder is to surrender to the Corporation, in the manner and at the place designated, his, her or its certificate or certificates representing the shares of Preferred Stock to be redeemed.

(ii) On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date shall, if a holder of shares in certificated form, surrender the certificate or certificates representing such shares (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate) to the Corporation, in the manner and at the place designated in the Redemption Notice, and thereupon the amount payable to such holder of shares of Preferred Stock pursuant to Section 2.3.2(b) above (the “*Redemption Price*”) for such shares shall be payable to the order of the person whose name appears on such certificate or certificates as the owner thereof. In the event less than all of the shares of Preferred Stock represented by a certificate are redeemed, a new certificate, instrument, or book entry representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(iii) If the Redemption Notice shall have been duly given, and if on the applicable Redemption Date the Redemption Price payable upon redemption of the shares of Preferred Stock to be redeemed on such Redemption Date is paid or tendered for payment or deposited with an independent payment agent so as to be available therefor in a timely manner, then notwithstanding that any certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, all rights with respect to such shares shall forthwith after the Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of any such certificate or certificates therefor.

**2.3.3 Amount Deemed Paid or Distributed.** The amount deemed paid or distributed to the holders of capital stock of the Corporation upon any such merger, consolidation, sale, transfer, exclusive license, other disposition or redemption shall be the cash or the value of the property, rights or securities to be paid or distributed to such holders pursuant to such Deemed Liquidation Event. The value of such property, rights or securities shall be determined in good faith by the Board of Directors of the Corporation, including the approval of at least one Preferred Director (as defined herein, and for long as a Preferred Director is then-sitting on the Board).

**2.3.4 Allocation of Escrow and Contingent Consideration.** In the event of a Deemed Liquidation Event pursuant to Section 2.3.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the “*Additional Consideration*”), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the “*Initial Consideration*”) shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event, and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon

satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Sections 2.1 and 2.2 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Section 2.3.4, consideration placed into escrow or retained as a holdback to be available for satisfaction of indemnification or similar obligations in connection with such Deemed Liquidation Event shall be deemed to be Additional Consideration.

### **3. Voting.**

**3.1 General.** On any matter presented to the stockholders of the Corporation for their action or consideration at any meeting of stockholders of the Corporation (or by written consent of stockholders in lieu of meeting), each holder of outstanding shares of Preferred Stock shall be entitled to cast the number of votes equal to the number of whole shares of Common Stock into which the shares of Preferred Stock held by such holder are convertible as of the record date for determining stockholders entitled to vote on such matter. Except as provided by law or by the other provisions of this Amended and Restated Certificate of Incorporation, holders of Preferred Stock shall vote together with the holders of Common Stock as a single class and on an as-converted to Common Stock basis.

**3.2 Election of Directors.** The holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation (the “*Preferred Directors*”); *provided, however*, for administrative convenience, the initial Preferred Directors may also be appointed by the Board in connection with the approval of the initial issuance of Series A Preferred Stock without a separate action by the holders of Series A Preferred Stock. The holders of record of the shares of Common Stock, exclusively and as a separate class, shall be entitled to elect two (2) directors of the Corporation. Any director elected as provided in the preceding sentence may be removed without cause by, and only by, the affirmative vote of the holders of the shares of the class or series of capital stock entitled to elect such director or directors, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. If the holders of shares of Preferred Stock or Common Stock, as the case may be, fail to elect a sufficient number of directors to fill all directorships for which they are entitled to elect directors, voting exclusively and as a separate class, pursuant to the first sentence of this Section 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Preferred Stock or Common Stock, as the case may be, elect a person to fill such directorship by vote or written consent in lieu of a meeting; and no such directorship may be filled by stockholders of the Corporation other than by the stockholders of the Corporation that are entitled to elect a person to fill such directorship, voting exclusively and as a separate class. The holders of record of the shares of Common Stock and of any other class or series of voting stock (including the Preferred Stock), exclusively and voting together as a single class, shall be entitled to elect the balance of the total number of directors of the Corporation (the “*Remaining Directors*”). At any meeting held for the purpose of electing a director, the presence in person or by proxy of the holders of a majority of the outstanding shares of the class or series entitled to elect such director shall constitute a quorum for the purpose of electing such director. Except as otherwise provided in this Section 3.2, a vacancy in any directorship filled by the holders of any class or series shall be filled only by vote or written consent in lieu of a meeting of the holders of such class or series or by any remaining director or directors elected by the holders of such class or series pursuant to this Section 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Section 3.2 shall terminate on the first date following the Original Issue Date (as defined below) for the Series A Preferred Stock on which there are issued and outstanding fewer than 3,417,171 shares of Series A Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination, or other similar recapitalization with respect to the Series Seed Preferred Stock).

**3.3 Protective Provisions.** At any time when at least 11,171,665 shares of Preferred Stock (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Preferred Stock) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation, recapitalization, reclassification, or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Holders, given in writing or by vote at a meeting, consenting or voting (as the case may be) separately as a class, and any such act or transaction entered into without such consent or vote shall be null and void *ab initio*, and of no force or effect:

**3.3.1** liquidate, dissolve or wind-up the business and affairs of the Corporation, effect any merger or consolidation or any other Deemed Liquidation Event, or consent to any of the foregoing;

**3.3.2** amend, alter or repeal any provision of the Certificate of Incorporation or Bylaws of the Corporation;

**3.3.3** create, or authorize the creation of, any additional class or series of capital stock unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption, or increase the authorized number of shares of Preferred Stock or increase the authorized number of shares of any additional class or series of capital stock of the Corporation unless the same ranks junior to the Preferred Stock with respect to the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends and rights of redemption;

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

**3.3.5** purchase or redeem (or permit any subsidiary to purchase or redeem) or pay or declare any dividend or make any distribution on, any shares of capital stock of the Corporation other than (i) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein, (ii) dividends or other distributions payable on the Common Stock solely in the form of additional shares of Common Stock, (iii) repurchases of stock from former employees, officers, directors, consultants or other persons who performed services for the Corporation or any subsidiary in connection with the cessation of such employment or service at no greater than the original purchase price thereof, (iv) exercises of contractual rights of first refusal upon a proposed sale of shares of capital stock to a third party, or (v) as approved by the Board of Directors, including the approval of the Preferred Directors, if any are then-sitting on the Board;

**3.3.6** create or authorize the creation of any debt security if the Corporation's aggregate indebtedness would exceed \$500,000, other than equipment leases, bank lines of credit, existing indebtedness or a revenue-based credit facility, unless such debt security has received the

prior approval of the Board, including the approval of the Preferred Directors, if any are then-sitting on the Board;

**3.3.7** create or hold capital stock in any subsidiary that is not a wholly owned subsidiary or dispose of any subsidiary stock or all or substantially all of any subsidiary assets; or

**3.3.8** increase or decrease the authorized number of directors constituting the Board of Directors.

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

**4.1 Right to Convert.**

**4.1.1 Conversion Ratio.** Each share of a series of Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time, and without the payment of additional consideration by the holder thereof, into such number of fully paid and non-assessable shares of Common Stock as is determined by dividing the Original Issue Price of such series by the Conversion Price (as defined below) in effect for such series at the time of conversion. The “*Conversion Price*” for each series of Preferred Stock shall initially be equal to the applicable Original Issue Price for such series of Preferred Stock. Such initial Conversion Price, and the rate at which shares of each series of Preferred Stock may be converted into shares of Common Stock, shall be subject to adjustment as provided below.

**4.1.2 Termination of Conversion Rights.** In the event of a liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event, the Conversion Rights shall terminate at the close of business on the last full day preceding the date fixed for the payment of any such amounts distributable on such event to the holders of Preferred Stock.

**4.2 Fractional Shares.** No fractional shares of Common Stock shall be issued upon conversion of the Preferred Stock. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the fair market value of a share of Common Stock as determined in good faith by the Board of Directors of the Corporation. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Preferred Stock the holder is at the time converting into Common Stock and the aggregate number of shares of Common Stock issuable upon such conversion.

**4.3 Mechanics of Conversion.**

**4.3.1 Notice of Conversion.** In order for a holder of Preferred Stock to voluntarily convert shares of Preferred Stock into shares of Common Stock, such holder shall (a) provide written notice to the Corporation’s transfer agent at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent) that such holder elects to convert all or any number of such holder’s shares of Preferred Stock and, if applicable, any event on which such conversion is contingent and (b) if such holder’s shares are certificated, surrender the certificate or certificates for such shares of Preferred Stock (or, if such registered holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate), at the office of the transfer agent for the Preferred Stock (or at the principal office of the Corporation if the Corporation serves as its own transfer agent). Such notice shall state such holder’s name or the names of the nominees in which such holder wishes



the shares of Common Stock to be issued. If required by the Corporation, any certificates surrendered for conversion shall be endorsed or accompanied by a written instrument or instruments of transfer, in form satisfactory to the Corporation, duly executed by the registered holder or his, her or its attorney duly authorized in writing. The close of business on the date of receipt by the transfer agent (or by the Corporation if the Corporation serves as its own transfer agent) of such notice and, if applicable, certificates (or lost certificate affidavit and agreement) shall be the time of conversion (the "**Conversion Time**"), and the shares of Common Stock issuable upon conversion of the specified shares shall be deemed to be outstanding of record as of such date. The Corporation shall, as soon as practicable after the Conversion Time (i) issue and deliver to such holder of Preferred Stock, or to his, her or its nominees, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion in accordance with the provisions hereof, or, in the case of uncertificated shares, a notice of issuance of uncertificated shares, and a certificate or notice, as the case may be, for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Section 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay all declared but unpaid dividends on the shares of Preferred Stock converted.

**4.3.2 Reservation of Shares.** The Corporation shall, at all times when the Preferred Stock shall be outstanding, reserve and keep available out of its authorized but unissued capital stock, for the purpose of effecting the conversion of the Preferred Stock, such number of its duly authorized shares of Common Stock as shall from time to time be sufficient to effect the conversion of all outstanding Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation shall take such corporate action as may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purposes, including, without limitation, engaging in best efforts to obtain the requisite stockholder approval of any necessary amendment to the Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Conversion Price of a series of Preferred Stock below the then par value of the shares of Common Stock issuable upon conversion of such Preferred Stock, the Corporation will take any corporate action which may, in the opinion of its counsel, be necessary in order that the Corporation may validly and legally issue fully paid and non-assessable shares of Common Stock at such adjusted Conversion Price.

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

**4.3.4 No Further Adjustment.** Upon any such conversion, no adjustment to the Conversion Price of a series of Preferred Stock shall be made for any declared but unpaid dividends on the Preferred Stock surrendered for conversion or on the Common Stock delivered upon conversion.

**4.3.5 Taxes.** The Corporation shall pay any and all issue and other similar taxes that may be payable in respect of any issuance or delivery of shares of Common Stock upon conversion of shares of Preferred Stock pursuant to this Section 4. The Corporation shall not, however, be

required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of shares of Common Stock in a name other than that in which the shares of Preferred Stock so converted were registered, and no such issuance or delivery shall be made unless and until the person or entity requesting such issuance has paid to the Corporation the amount of any such tax or has established, to the satisfaction of the Corporation, that such tax has been paid.

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

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

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

(b) “*Original Issue Date*” for a series of Preferred Stock shall mean the date on which the first share of such series was issued.

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

(d) “*Additional Shares of Common Stock*” shall mean, a to any series of Preferred Stock, all shares of Common Stock issued (or, pursuant to Section 4.4.3 below, deemed to be issued) by the Corporation after the Original Issue Date for such series, other than certain securities consisting of (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (any securities referred to in clauses (I) and (2) being referred to herein as “*Exempted Securities*”):

(i) shares of Common Stock, Options or Convertible Securities issued as a dividend or distribution on Preferred Stock;

(ii) shares of Common Stock, Options or Convertible Securities issued by reason of a dividend, stock split, split-up or other distribution on shares of Common Stock that is covered by Section 4.5, 4.6, 4.7 or 4.8;

(iii) shares of Common Stock or Options issued to employees or directors of, or consultants or advisors to, the Corporation or any of its subsidiaries pursuant to a plan, agreement or arrangement approved by the Board of Directors of the Corporation;

(iv) shares of Common Stock or Convertible Securities actually issued upon the exercise of Options or shares of Common Stock actually issued upon the conversion or exchange of Convertible Securities, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock, Options or Convertible Securities issued to banks, equipment lessors or other financial institutions, or to real property lessors, pursuant to a debt financing, equipment leasing or real property leasing transaction approved by the Board of Directors of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board;

(vi) shares of Common Stock, Options or Convertible Securities issued to suppliers or third party service providers in connection with the provision of goods or services pursuant to transactions approved by the Board of Directors of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board;

(vii) shares of Common Stock, Options or Convertible Securities issued as acquisition consideration pursuant to the acquisition of another entity 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 of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board; or

(viii) shares of Common Stock, Options or Convertible Securities issued in connection with sponsored research, collaboration, technology license, development, OEM, marketing or other similar agreements or strategic partnerships approved by the Board of Directors of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board.

**4.4.2 No Adjustment of Conversion Price.** No adjustment in the Conversion Price for a series of Preferred Stock shall be made as the result of the issuance or deemed issuance of Additional Shares of Common Stock if the Corporation receives written notice from the Requisite Holders agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common Stock.

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

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

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to any Conversion Price pursuant to the terms of Section 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock issuable upon the exercise, conversion and/or exchange of any such Option or Convertible Security or (2) any increase or decrease in the consideration payable to the Corporation upon such exercise, conversion and/or exchange, then, effective upon such increase or decrease becoming effective, the Conversion Price computed upon the original issue of such Option or Convertible Security (or upon the occurrence of a record date with respect thereto) shall be readjusted to such Conversion Price as would have obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing such 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 for a given series of Preferred Stock pursuant to the terms of Section 4.4.4 (either because the consideration per share of the Additional Shares of Common Stock subject thereto, determined pursuant to Section 4.4.5, was equal to or greater than the Conversion Price then in effect for such series, or because such Option or Convertible Security was issued before the Original Issue Date for such series), are revised after such Original Issue Date as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase in the number of shares of Common Stock issuable upon the exercise, conversion or exchange of any such Option or Convertible Security or (2) any decrease in the consideration payable to the Corporation upon such exercise, conversion or exchange, then such Option or Convertible Security, as so amended or adjusted, and the Additional Shares of Common Stock subject thereto (determined in the manner provided in Section 4.4.3(a)) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

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

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

**4.4.4 Adjustment of Conversion Price Upon Issuance of Additional Shares of Common Stock.** In the event the Corporation shall at any time after the Original Issue Date for a series of Preferred Stock issue Additional Shares of Common Stock (including Additional Shares of Common Stock deemed to be issued pursuant to Section 4.4.3), without consideration or for a consideration per share less than the Conversion Price for such series in effect immediately prior to such issuance or deemed issuance, then such Conversion Price shall be reduced, concurrently with such issuance or deemed

issuance, to a price (calculated to the nearest one-hundredth of a cent) determined in accordance with the following formula:

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

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

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

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

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

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

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

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

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

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

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board; and

(iii) in the event Additional Shares of Common Stock are issued together with other shares or securities or other assets of the Corporation for consideration which covers both, be the proportion of such consideration so received, computed as provided in clauses (i) and (ii) above, as determined in good faith by the Board of Directors of the Corporation, including the approval of at least one Preferred Director, if any are then-sitting on the Board.

**(b) Options and Convertible Securities.** The consideration per share received by the Corporation for Additional Shares of Common Stock deemed to have been issued pursuant to Section 4.4.3, relating to Options and Convertible Securities, shall be determined by dividing:

**(i)** the total amount, if any, received or receivable by the Corporation as consideration for the issue of such Options or Convertible Securities, plus the minimum aggregate amount of additional consideration (as set forth in the instruments relating thereto, without regard to any provision contained therein for a subsequent adjustment of such consideration) payable to the Corporation upon the exercise of such Options or the conversion or exchange of such Convertible Securities, or in the case of Options for Convertible Securities, the exercise of such Options for Convertible Securities and the conversion or exchange of such Convertible Securities, by

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

**4.4.6 Multiple Closing Dates.** In the event the Corporation shall issue on more than one date Additional Shares of Common Stock that are a part of one transaction or a series of related transactions and that would result in an adjustment to the Conversion Price of any series of Preferred Stock pursuant to the terms of Section 4.4.4, 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).

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

**4.6 Adjustment for Certain Dividends and Distributions.** In the event the Corporation at any time or from time to time after the Original Issue Date for a series of Preferred Stock shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Conversion Price of such series in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Conversion Price then in effect by a fraction:

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

(2) the denominator of which shall be the total number of shares of Common Stock issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution.

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

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

**4.8 Adjustment for Merger or Reorganization, Etc.** Subject to the provisions of Section 2.3, as to any series of Preferred Stock, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not such Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Sections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of such series of Preferred Stock shall thereafter be convertible, in lieu of the Common Stock 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 Common Stock of the Corporation issuable upon conversion of one share of such Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board of Directors of the Corporation) shall be made in the application of the provisions in this Section 4 with respect to the rights and interests thereafter of the holders of such series of Preferred Stock, to the end that the provisions set forth in this Section 4 (including provisions with respect to changes in and other adjustments of the Conversion Price of such series) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of such Preferred Stock.

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

Preferred Stock (but in any event not later than ten (10) days thereafter), furnish or cause to be furnished to such holder a certificate setting forth (i) the Conversion Price of such series then in effect, and (ii) the number of shares of Common Stock and the amount, if any, of other securities, cash or property which then would be received upon the conversion of shares of such series.

**4.10 Notice of Record Date.** In the event:

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

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

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

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

**5. Mandatory Conversion.**

**5.1 Trigger Events.** Upon either (a) the closing of the sale of shares of Common Stock to the public in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least \$50,000,000 of gross proceeds to the Corporation, and, in connection with such offering is listed for trading on a national securities exchange, or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the Requisite Holders (the time of such closing or the date and time specified or the time of the event specified in such vote or written consent is referred to herein as the “*Mandatory Conversion Time*”), then (i) all outstanding shares of Preferred Stock shall automatically be converted into shares of Common Stock, at the then effective conversion rate as calculated pursuant to Section 4.1.1, and (ii) such shares may not be reissued by the Corporation.

**5.2 Procedural Requirements.** All holders of record of shares of Preferred Stock shall be sent written notice of the Mandatory Conversion Time and the place designated for mandatory conversion of all such shares of Preferred Stock pursuant to this Section 5. Such notice need not be sent in advance of the occurrence of the Mandatory Conversion Time. Upon receipt of such notice, each holder of shares of Preferred Stock in certificated form shall surrender his, her or its certificate or certificates for all such shares (or, if such holder alleges that such certificate has been lost, stolen or destroyed, a lost certificate affidavit and agreement reasonably acceptable to the Corporation to indemnify the Corporation



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

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

**7. Waiver.** Except as otherwise set forth herein, (a) any of the rights, powers, preferences and other terms of a series of the Preferred Stock that are set forth herein may be waived on behalf of all holders of such series of Preferred Stock by the affirmative written consent or vote of the holders of a majority of the shares of such series of Preferred Stock that are then outstanding, and (b) any of the rights, powers, preferences and other terms of the Preferred Stock as a class that are set forth herein may be waived on behalf of all holders of the Preferred Stock as a single class by the affirmative written consent or vote of the Requisite Holders.

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

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

**SIXTH:** Subject to any additional vote required by this Amended and Restated Certificate of Incorporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

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

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

**NINTH:** To the fullest extent permitted by law, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the General Corporation Law or any other law of the State of Delaware is amended after approval by the stockholders of this Article Ninth to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law as so amended.

Any repeal or modification of the foregoing provisions of this Article Ninth by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of, or increase the liability of any director of the Corporation with respect to any acts or omissions of such director occurring prior to, such repeal or modification.

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

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

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

**TWELFTH:** Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the Delaware General Corporation Law or the Corporation's Certificate of Incorporation or bylaws or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Twelfth shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article Twelfth (including, without limitation, each portion of any sentence of this Article Twelfth containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

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

\* \* \*

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

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

**IN WITNESS WHEREOF**, this Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this Corporation on this 4th day of February, 2022.

WEECARE, INC.

By: /s/ Jessica Chang  
Jessica Chang  
President and Chief Executive Officer

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**WEECARE, INC.**

a Delaware corporation

**AMENDED AND RESTATED BYLAWS**

As Adopted August 15, 2017

As Amended and Restated February 4, 2022

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**WEECARE, INC.**

a Delaware corporation

**AMENDED AND RESTATED BYLAWS**

As Adopted August 17, 2017

As Amended and Restated February 4, 2022

**ARTICLE I: STOCKHOLDERS**

**Section 1.1: Annual Meetings.** Unless members of the Board of Directors of the Corporation (the “*Board*”) are elected by written consent in lieu of an annual meeting, as permitted by Section 211 of the Delaware General Corporation Law (the “*DGCL*”) and these Bylaws, an annual meeting of stockholders shall be held for the election of directors at such date and time as the Board shall each year fix. The meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine. Any proper business may be transacted at the annual meeting.

**Section 1.2: Special Meetings.** Special meetings of stockholders for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the holders of shares of the Corporation that are entitled to cast not less than ten percent (10%) of the total number of votes entitled to be cast by all stockholders at such meeting, or by a majority of the “*Whole Board*,” which shall mean the total number of authorized directors, whether or not there exist any vacancies in previously authorized directorships. Special meetings may not be called by any other person or persons. If a special meeting of stockholders is called by any person or persons other than by a majority of the members of the Board, then such person or persons shall request such meeting by delivering a written request to call such meeting to each member of the Board, and the Board shall then determine the time and date of such special meeting, which shall be held not more than one hundred twenty (120) days nor less than thirty-five (35) days after the written request to call such special meeting was delivered to each member of the Board. The special meeting may be held either at a place, within or without the State of Delaware, or by means of remote communication as the Board in its sole discretion may determine.

**Section 1.3: Notice of Meetings.** Notice of all meetings of stockholders shall be given in writing or by electronic transmission in the manner provided by law (including, without limitation, as set forth in Section 7.1.1 of these Bylaws) stating the date, time and place, if any, of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by applicable law or the Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time, the “*Certificate of Incorporation*”), such notice shall be given not less than ten (10), nor more than sixty (60), days before the date of the meeting to each stockholder of record entitled to vote at such meeting.

**Section 1.4: Adjournments.** The chairperson of the meeting shall have the power to adjourn the meeting to another time, date and place (if any). Any meeting of stockholders may adjourn from time to time, and notice need not be given of any such adjourned meeting if the time, date and place (if any) thereof and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned

meeting are announced at the meeting at which the adjournment is taken; *provided, however*, that if the adjournment is for more than thirty (30) days, or if a new record date is fixed for the adjourned meeting, then a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting the Corporation may transact any business that might have been transacted at the original meeting. To the fullest extent permitted by law, the Board may cancel, postpone or reschedule any previously scheduled special or annual meeting of stockholders before it is to be held, in which case notice shall be provided to the stockholders of the new date, time and place, if any, of the meeting as provided in Section 1.3 above.

**Section 1.5: Quorum.** At each meeting of stockholders the holders of a majority of the voting power of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, unless otherwise required by applicable law, the Certificate of Incorporation or these Bylaws. If a quorum shall fail to attend any meeting, the chairperson of the meeting or the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at the meeting may adjourn the meeting. Shares of the Corporation's stock belonging to the Corporation (or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation are held, directly or indirectly, by the Corporation), shall neither be entitled to vote nor be counted for quorum purposes; *provided, however*, that the foregoing shall not limit the right of the Corporation or any other corporation to vote any shares of the Corporation's stock held by it in a fiduciary capacity and to count such shares for purposes of determining a quorum.

**Section 1.6: Organization.** Meetings of stockholders shall be presided over by such person as the Board may designate, or, in the absence of such a person, the Chairperson of the Board, or, in the absence of such person, the President of the Corporation, or, in the absence of such person, such person as may be chosen by the holders of a majority of the voting power of the shares entitled to vote who are present, in person or by proxy, at the meeting. Such person shall be chairperson of the meeting and, subject to Section 1.11 hereof, shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of discussion as seems to him or her to be in order. The Secretary of the Corporation shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 1.7: Voting; Proxies.** Each stockholder entitled to vote at a meeting of stockholders, or to take corporate action by written consent without a meeting, may authorize another person or persons to act for such stockholder by proxy. Such a proxy may be prepared, transmitted and delivered in any manner permitted by applicable law. Except as may be required in the Certificate of Incorporation, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Unless otherwise provided by applicable law, the Certificate of Incorporation or these Bylaws, every matter other than the election of directors shall be decided by the affirmative vote of the holders of a majority of the voting power of the shares of stock entitled to vote on such matter that are present in person or represented by proxy at the meeting and are voted for or against the matter.

## **Section 1.8: Fixing Date for Determination of Stockholders of Record.**

1.8.1 Meeting of Stockholders. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

1.8.2 Payment of Dividends; Other Lawful Action. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty (60) days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

1.8.3 Action by Written Consent. Unless otherwise restricted by the Certificate of Incorporation, in order that the Corporation may determine the stockholders entitled to express consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to express consent to corporate action in writing without a meeting is fixed by the Board, (i) when no prior action of the Board is required by law, the record date for such purpose shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in accordance with applicable law, and (ii) if prior action by the Board is required by law, the record date for such purpose shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

**Section 1.9: List of Stockholders Entitled to Vote.** The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical



order and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, either on a reasonably accessible electronic network as permitted by law (provided that the information required to gain access to the list is provided with the notice of the meeting) or during ordinary business hours at the principal place of business of the Corporation. If the meeting is held at a location where stockholders may attend in person, the list shall also be produced and kept at the time and place of the meeting during the whole time thereof and may be inspected by any stockholder who is present at the meeting. If the meeting is held solely by means of remote communication, then the list shall be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access the list shall be provided with the notice of the meeting.

**Section 1.10: Action by Written Consent of Stockholders.**

1.10.1 Procedure. Unless otherwise provided by the Certificate of Incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed in the manner permitted by law by the holders of outstanding stock having not less than the number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, to its principal place of business or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the agent of the Corporation's registered office in the State of Delaware shall be by hand or by certified or registered mail, return receipt requested. Written stockholder consents shall bear the date of signature of each stockholder who signs the consent in the manner permitted by law and shall be delivered to the Corporation as provided in Section 1.10.2 below. No written consent shall be effective to take the action set forth therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation in the manner required by law, written consents signed by a sufficient number of stockholders to take the action set forth therein are delivered to the Corporation in the manner required by law.

1.10.2 Form of Consent A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxy holder, or a person or persons authorized to act for a stockholder or proxy holder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (a) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxy holder or by a person or persons authorized to act for the stockholder or proxy holder and (b) the date on which such stockholder or proxy holder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are

recorded. Delivery made to a Corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

1.10.3 Notice of Consent. Prompt notice of the taking of corporate action by stockholders without a meeting by less than unanimous written consent of the stockholders shall be given to those stockholders who have not consented thereto in writing and, who, if the action had been taken at a meeting, would have been entitled to notice of the meeting, if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as required by law. If the action which is consented to is such as would have required the filing of a certificate under the DGCL if such action had been voted on by stockholders at a meeting thereof, then if the DGCL so requires, the certificate so filed shall state, in lieu of any statement required by the DGCL concerning any vote of stockholders, that written stockholder consent has been given in accordance with Section 228 of the DGCL.

### **Section 1.11: Inspectors of Elections.**

1.11.1 Applicability. Unless otherwise required by the Certificate of Incorporation or by the DGCL, the following provisions of this Section 1.11 shall apply only if and when the Corporation has a class of voting stock that is: (a) listed on a national securities exchange; (b) authorized for quotation on an interdealer quotation system of a registered national securities association; or (c) held of record by more than two thousand (2,000) stockholders. In all other cases, observance of the provisions of this Section 1.11 shall be optional, and at the discretion of the Board.

1.11.2 Appointment. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors of election to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting.

1.11.3 Inspector's Oath. Each inspector of election, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability.

1.11.4 Duties of Inspectors. At a meeting of stockholders, the inspectors of election shall (a) ascertain the number of shares outstanding and the voting power of each share, (b) determine the shares represented at a meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period of time a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The

inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

1.11.5 Opening and Closing of Polls. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced by the chairperson of the meeting at the meeting. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

1.11.6 Determinations. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes submitted with those proxies, any information provided in connection with proxies in accordance with any information provided pursuant to Section 211(a)(2)(B)(i) of the DGCL, or Sections 211(e) or 212(c)(2) of the DGCL, ballots and the regular books and records of the Corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification of their determinations pursuant to this Section 1.11 shall specify the precise information considered by them, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

## ARTICLE II: BOARD OF DIRECTORS

**Section 2.1: Number; Qualifications.** The Board shall consist of one or more members. Unless otherwise required by law or the Certificate of Incorporation, the number of directors shall be fixed from time to time by resolution of a majority of the Whole Board or the stockholders of the Corporation holding at least a majority of the voting power of the Corporation's outstanding stock then entitled to vote at an election of directors. No decrease in the authorized number of directors constituting the Board shall shorten the term of any incumbent director. Directors need not be stockholders of the Corporation.

**Section 2.2: Election; Resignation; Removal; Vacancies.** The Board shall initially consist of the person or persons elected by the incorporator or named in the Corporation's initial Certificate of Incorporation. Unless otherwise provided by the Certificate of Incorporation, each director shall hold office until the next annual meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Any director may resign at any time upon written notice or notice by electronic transmission to the Corporation. Except as otherwise provided by the Certificate of Incorporation or applicable law, (a) any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors and (b) any vacancy occurring in the Board for any reason, and any newly created directorship resulting from any increase in the authorized number of directors to be elected by all stockholders having the right to vote as a single class, may be filled by the stockholders or by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

**Section 2.3: Regular Meetings.** Regular meetings of the Board may be held at such places, within or without the State of Delaware, and at such times as the Board may from time to time determine. Notice of regular meetings need not be given if the date, times and places thereof are fixed by resolution of the Board.

**Section 2.4: Special Meetings.** Special meetings of the Board may be called by the Chairperson of the Board, the President or a majority of the members of the Board then in office and may be held at any time, date or place, within or without the State of Delaware, as the person or persons calling the meeting shall fix. Notice of the time, date and place of such meeting shall be given, orally, in writing or by electronic transmission (including electronic mail), by the person or persons calling the meeting to all directors at least four (4) days before the meeting if the notice is mailed, or at least twenty-four (24) hours before the meeting if such notice is given by telephone, hand delivery, telegram, telex, mailgram, facsimile, electronic mail or other means of electronic transmission. Unless otherwise indicated in the notice, any and all business may be transacted at a special meeting.

**Section 2.5: Remote Meetings Permitted.** Members of the Board, or any committee of the Board, may participate in a meeting of the Board or such committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to conference telephone or other communications equipment shall constitute presence in person at such meeting.

**Section 2.6: Quorum; Vote Required for Action.** Subject to Section 2.2 above regarding the ability of the members of the Board to fill a vacancy or newly-created directorship on the Board, at all meetings of the Board, the presence a majority of the then current members of the Board shall constitute a quorum for the transaction of business; provided, however, that such majority shall constitute at least one-third (1/3) of the Whole Board. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, date or time without further notice thereof. Except as otherwise provided herein or in the Certificate of Incorporation, or required by law, the vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board.

**Section 2.7: Organization.** Meetings of the Board shall be presided over by the Chairperson of the Board, or in such person's absence by the President, or in such person's absence by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in such person's absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

**Section 2.8: Written Action by Directors.** Any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee, respectively, in the minute books of the Corporation. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 2.9: Powers.** The Board may, except as otherwise required by law or the Certificate of Incorporation, exercise all such powers and manage and direct all such acts and things as may be exercised or done by the Corporation.

**Section 2.10: Compensation of Directors.** Members of the Board, as such, may receive, pursuant to a resolution of the Board, fees and other compensation for their services as directors, including without limitation their services as members of committees of the Board.

### ARTICLE III: COMMITTEES

**Section 3.1: Committees.** The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting of such committee who are not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member. Any such committee, to the extent provided in a resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving, adopting, or recommending to the stockholders any action or matter (other than the election or removal of members of the Board) expressly required by the DGCL to be submitted to stockholders for approval or (b) adopting, amending or repealing any bylaw of the Corporation.

**Section 3.2: Committee Rules.** Unless the Board otherwise provides, each committee designated by the Board may make, alter and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article II of these Bylaws.

### ARTICLE IV: OFFICERS

**Section 4.1: Generally.** The officers of the Corporation shall consist of a Chief Executive Officer (who may be the Chairperson of the Board or the President), a Secretary and a Treasurer and may consist of such other officers, including a Chief Financial Officer, Chief Technology Officer and one or more Vice Presidents, as may from time to time be appointed by the Board. All officers shall be elected by the Board; *provided, however,* that the Board may empower the Chief Executive Officer of the Corporation to appoint any officer other than the Chairperson of the Board, the Chief Executive Officer, the President, the Chief Financial Officer or the Treasurer. Each officer shall hold office until such person's successor is appointed or until such person's earlier resignation, death or removal. Any number of offices may be held by the same person. Any officer may resign at any time upon written notice to the Corporation. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board.

**Section 4.2: Chief Executive Officer.** Subject to the control of the Board and such supervisory powers, if any, as may be given by the Board, the powers and duties of the Chief Executive Officer of the Corporation are:

- (a) To act as the general manager and, subject to the control of the Board, to have general supervision, direction and control of the business and affairs of the Corporation;
- (b) Subject to Article I, Section 1.6, to preside at all meetings of the stockholders;
- (c) Subject to Article I, Section 1.2, to call special meetings of the stockholders to be held at such times and, subject to the limitations prescribed by law or by these Bylaws, at such places as he or she shall deem proper; and
- (d) To affix the signature of the Corporation to all deeds, conveyances, mortgages, guarantees, leases, obligations, bonds, certificates and other papers and instruments in writing which have been authorized by the Board or which, in the judgment of the Chief Executive Officer, should be executed on behalf of the Corporation; to sign certificates for shares of stock of the Corporation; and, subject to the direction of the Board, to have general charge of the property of the Corporation and to supervise and control all officers, agents and employees of the Corporation.

The President shall be the Chief Executive Officer of the Corporation unless the Board shall designate another officer to be the Chief Executive Officer. If there is no President, and the Board has not designated any other officer to be the Chief Executive Officer, then the Chairperson of the Board shall be the Chief Executive Officer.

**Section 4.3: Chairperson of the Board.** The Chairperson of the Board shall be chosen from among the members of the Board and shall have the power to preside at all meetings of the Board and shall have such other powers and duties as provided in these Bylaws and as the Board may from time to time prescribe.

**Section 4.4: President.** The Chief Executive Officer shall be the President of the Corporation unless the Board shall have designated one individual as the President and a different individual as the Chief Executive Officer of the Corporation. Subject to the provisions of these Bylaws and to the direction of the Board, and subject to the supervisory powers of the Chief Executive Officer (if the Chief Executive Officer is an officer other than the President), and subject to such supervisory powers and authority as may be given by the Board to the Chairperson of the Board, and/or to any other officer, the President shall have the responsibility for the general management and control of the business and affairs of the Corporation and the general supervision and direction of all of the officers, employees and agents of the Corporation (other than the Chief Executive Officer, if the Chief Executive Officer is an officer other than the President) and shall perform all duties and have all powers that are commonly incident to the office of President or that are delegated to the President by the Board.

**Section 4.5: Vice President.** Each Vice President shall have all such powers and duties as are commonly incident to the office of Vice President, or that are delegated to him or her by the Board or the Chief Executive Officer. A Vice President may be designated by the Board to perform

the duties and exercise the powers of the Chief Executive Officer in the event of the Chief Executive Officer's absence or disability.

**Section 4.6: Chief Financial Officer.** The Chief Financial Officer shall be the Treasurer of the Corporation unless the Board shall have designated another officer as the Treasurer of the Corporation. Subject to the direction of the Board and the Chief Executive Officer, the Chief Financial Officer shall perform all duties and have all powers that are commonly incident to the office of Chief Financial Officer.

**Section 4.7: Treasurer.** The Treasurer shall have custody of all moneys and securities of the Corporation. The Treasurer shall make such disbursements of the funds of the Corporation as are authorized and shall render from time to time an account of all such transactions. The Treasurer shall also perform such other duties and have such other powers as are commonly incident to the office of Treasurer, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.8: Chief Technology Officer.** The Chief Technology Officer shall have responsibility for the general research and development activities of the Corporation, for supervision of the Corporation's research and development personnel, for new product development and product improvements, for overseeing the development and direction of the Corporation's intellectual property development and such other responsibilities as may be given to the Chief Technology Officer by the Board, subject to: (a) the provisions of these Bylaws; (b) the direction of the Board; (c) the supervisory powers of the Chief Executive Officer of the Corporation; and (d) those supervisory powers that may be given by the Board to the Chairperson or Vice Chairperson of the Board.

**Section 4.9: Secretary.** The Secretary shall issue or cause to be issued all authorized notices for, and shall keep, or cause to be kept, minutes of all meetings of the stockholders and the Board. The Secretary shall have charge of the corporate minute books and similar records and shall perform such other duties and have such other powers as are commonly incident to the office of Secretary, or as the Board or the Chief Executive Officer may from time to time prescribe.

**Section 4.10: Delegation of Authority.** The Board may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding any provision hereof.

**Section 4.11: Removal.** Any officer of the Corporation shall serve at the pleasure of the Board and may be removed at any time, with or without cause, by the Board; provided that if the Board has empowered the Chief Executive Officer to appoint any Vice Presidents of the Corporation, then such Vice Presidents may be removed by the Chief Executive Officer. Such removal shall be without prejudice to the contractual rights of such officer, if any, with the Corporation.

## ARTICLE V: STOCK

**Section 5.1: Certificates.** The shares of capital stock of the Corporation shall be represented by certificates; *provided, however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock may be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered

to the Corporation (or the transfer agent or registrar, as the case may be). Notwithstanding the adoption of such resolution by the Board, every holder of stock that is represented by a certificate shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers representing the number of shares owned by such stockholder in the Corporation registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were an officer, transfer agent or registrar at the date of issue.

**Section 5.2: Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates or Uncertificated Shares.** The Corporation may issue a new certificate of stock, or uncertificated shares, in the place of any certificate previously issued by it, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to agree to indemnify the Corporation and/or to give the Corporation a bond sufficient to indemnify it, against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

**Section 5.3: Other Regulations.** The issue, transfer, conversion and registration of stock certificates and uncertificated securities shall be governed by such other regulations as the Board may establish.

## ARTICLE VI: INDEMNIFICATION

**Section 6.1: Indemnification of Officers and Directors.** Each person who was or is made a party to, or is threatened to be made a party to, or is involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "***Proceeding***"), by reason of the fact that such person (or a person of whom such person is the legal representative), is or was a member of the Board or officer of the Corporation or a Reincorporated Predecessor (as defined below) or is or was serving at the request of the Corporation or a Reincorporated Predecessor as a member of the board of directors, officer or trustee of another corporation, or of a partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans (for purposes of this Article VI, an "***Indemnitee***"), shall be indemnified and held harmless by the Corporation to the fullest extent permitted by applicable law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expenses, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes and penalties and amounts paid or to be paid in settlement) reasonably incurred or suffered by such Indemnitee in connection therewith, provided such Indemnitee acted in good faith and in a manner that the Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or Proceeding, had no reasonable cause to believe the Indemnitee's conduct was unlawful. Such indemnification shall continue as to an Indemnitee who has ceased to be a director or officer and shall inure to the benefit of such Indemnitees' heirs, executors and administrators. Notwithstanding the foregoing, the Corporation shall indemnify any such Indemnitee seeking indemnity in connection with a Proceeding (or part thereof) initiated by such Indemnitee only if



such Proceeding (or part thereof) was authorized by the Board or such indemnification is authorized by an agreement approved by the Board. As used herein, the term the “***Reincorporated Predecessor***” means a corporation that is merged with and into the Corporation in a statutory merger where (a) the Corporation is the surviving corporation of such merger and (b) the primary purpose of such merger is to change the corporate domicile of the Reincorporated Predecessor to Delaware.

**Section 6.2: Advance of Expenses.** The Corporation shall pay all expenses (including attorneys’ fees) incurred by such an Indemnitee in defending any such Proceeding as they are incurred in advance of its final disposition; *provided, however*, that (a) if the DGCL then so requires, the payment of such expenses incurred by such an Indemnitee in advance of the final disposition of such Proceeding shall be made only upon delivery to the Corporation of an undertaking, by or on behalf of such Indemnitee, to repay all amounts so advanced if it should be determined ultimately by final judicial decision from which there is no appeal that such Indemnitee is not entitled to be indemnified under this Article VI or otherwise; and (b) the Corporation shall not be required to advance any expenses to a person against whom the Corporation directly brings a claim, in a Proceeding, alleging that such person has breached such person’s duty of loyalty to the Corporation, committed an act or omission not in good faith or that involves intentional misconduct or a knowing violation of law, or derived an improper personal benefit from a transaction.

**Section 6.3: Non-Exclusivity of Rights.** The rights conferred on any person in this Article VI shall not be exclusive of any other right that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaw, agreement, vote or consent of stockholders or disinterested directors, or otherwise. Additionally, nothing in this Article VI shall limit the ability of the Corporation, in its discretion, to indemnify or advance expenses to persons whom the Corporation is not obligated to indemnify or advance expenses pursuant to this Article VI.

**Section 6.4: Indemnification Contracts.** The Board is authorized to cause the Corporation to enter into indemnification contracts with any director, officer, employee or agent of the Corporation, or any person 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 employee benefit plans, providing indemnification or advancement rights to such person. Such rights may be greater than those provided in this Article VI.

**Section 6.5: Right of Indemnitee to Bring Suit.** The following shall apply to the extent not in conflict with any indemnification contract provided for in Section 6.4 above.

6.5.1 **Right to Bring Suit.** If a claim under Section 6.1 or 6.2 of this Article VI is not paid in full by the Corporation within sixty (60) days after a written claim has been received by the Corporation, except in the case of a claim for an advancement of expenses, in which case the applicable period shall be twenty (20) days, the Indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (a) any suit brought by the Indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the Indemnitee to enforce a right to an

advancement of expenses) it shall be a defense that, and (b) in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the Indemnitee has not met any applicable standard for indemnification set forth in applicable law.

6.5.2 Effect of Determination. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the Indemnitee is proper in the circumstances because the Indemnitee has met the applicable standard of conduct set forth in applicable law, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the Indemnitee has not met such applicable standard of conduct, shall create a presumption that the Indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the Indemnitee, be a defense to such suit.

6.5.3 Burden of Proof. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article VI, or otherwise, shall be on the Corporation.

**Section 6.6: Nature of Rights.** The rights conferred upon Indemnitees in this Article VI shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be a director, officer or trustee and shall inure to the benefit of the Indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of any provision of this Article VI that adversely affects any right of an Indemnitee or an Indemnitee's successors shall be prospective only, and shall not adversely affect any right or protection conferred on a person pursuant to this Article VI and existing at the time of such amendment, repeal or modification.

## ARTICLE VII: NOTICES

### **Section 7.1: Notice.**

7.1.1 Form and Delivery. Except as otherwise specifically required in these Bylaws (including, without limitation, Section 7.1.2 below) or by law, all notices required to be given pursuant to these Bylaws shall be in writing and may, (a) in every instance in connection with any delivery to a member of the Board, be effectively given by hand delivery (including use of a delivery service), by depositing such notice in the mail, postage prepaid, or by sending such notice by prepaid telegram, cablegram, overnight express courier, facsimile, electronic mail or other form of electronic transmission and (b) be effectively be delivered to a stockholder when given by hand delivery, by depositing such notice in the mail, postage prepaid or, if specifically consented to by the stockholder as described in Section 7.1.2 of this Article VII by sending such notice by telegram, cablegram, facsimile, electronic mail or other form of electronic transmission. Any such notice shall be addressed to the person to whom notice is to be given at such person's address as it appears on the records of the Corporation. The notice shall be deemed given (a) in the case of hand delivery, when received by the person to whom notice is to be given or by any person accepting such notice on behalf of such person, (b) in the case of delivery by mail, upon deposit in the mail,

(c) in the case of delivery by overnight express courier, when dispatched, and (d) in the case of delivery via telegram, cablegram, facsimile, electronic mail or other form of electronic transmission, when dispatched.

7.1.2 Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation, or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given in accordance with Section 232 of the DGCL. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (a) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent and (b) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice; *provided, however,* the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this Section 7.1.2 shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of such posting and the giving of such separate notice; and (iv) if by any other form of electronic transmission, when directed to the stockholder.

7.1.3 Affidavit of Giving Notice. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given in writing or by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

**Section 7.2: Waiver of Notice.** Whenever notice is required to be given under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver of notice, signed by the person entitled to notice, or waiver by electronic transmission by such person, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee of directors need be specified in any waiver of notice.

## **ARTICLE VIII: INTERESTED DIRECTORS**

**Section 8.1: Interested Directors.** No contract or transaction between the Corporation and one or more of its members of the Board or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are members of the board of directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof that authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if: (a) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed

or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board, a committee thereof, or the stockholders.

**Section 8.2: Quorum.** Interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

## ARTICLE IX: MISCELLANEOUS

**Section 9.1: Annual Report.** During such time or times that the Corporation is subject to Section 1501 of the California General Corporation Law, if and so long as there are fewer than one hundred (100) holders of record of the Corporation's shares, the requirement of sending of an annual report to the stockholders of the Corporation is hereby expressly waived.

**Section 9.2: Fiscal Year.** The fiscal year of the Corporation shall be determined by resolution of the Board.

**Section 9.3: Seal.** The Board may provide for a corporate seal, which may have the name of the Corporation inscribed thereon and shall otherwise be in such form as may be approved from time to time by the Board.

**Section 9.4: Form of Records.** Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on or by means of, or be in the form of, diskettes, CDs, or any other information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

**Section 9.5: Reliance upon Books and Records.** A member of the Board, or a member of any committee designated by the Board shall, in the performance of such person's duties, be fully protected in relying in good faith upon records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

**Section 9.6: Certificate of Incorporation Governs.** In the event of any conflict between the provisions of the Certificate of Incorporation and Bylaws, the provisions of the Certificate of Incorporation shall govern.

**Section 9.7: Severability.** If any provision of these Bylaws shall be held to be invalid, illegal, unenforceable or in conflict with the provisions of the Certificate of Incorporation, then such provision shall nonetheless be enforced to the maximum extent possible consistent with such

holding and the remaining provisions of these Bylaws (including without limitation, all portions of any section of these Bylaws containing any such provision held to be invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation, that are not themselves invalid, illegal, unenforceable or in conflict with the Certificate of Incorporation) shall remain in full force and effect.

#### **ARTICLE X: FORUM SELECTION**

Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the United States Securities Act of 1933, as amended, and the rules and regulations promulgated by the Securities and Exchange Commission thereunder. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Article X.

#### **ARTICLE XI: AMENDMENT**

Unless otherwise required by the Certificate of Incorporation, stockholders of the Corporation holding at least a majority of the voting power of the Corporation's outstanding voting stock then entitled to vote at an election of directors shall have the power to adopt, amend or repeal Bylaws. To the extent provided in the Certificate of Incorporation, the Board shall also have the power to adopt, amend or repeal Bylaws of the Corporation.

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**CERTIFICATION OF AMENDED AND RESTATED BYLAWS  
OF  
WEECARE, INC.**

a Delaware corporation

I, Jessica Chang, certify that I am Secretary of WeeCare, Inc., a Delaware corporation (the “*Corporation*”), that I am duly authorized to make and deliver this certification, that the attached Amended and Restated Bylaws are a true and complete copy of the Amended and Restated Bylaws of the Corporation in effect as of the date of this certificate.

Dated: February 4, 2022

  
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Jessica Chang, Secretary