

ZALĄCZNIK 2

PIĄTY ZMIENIONY I UJEDNOLICONY AKT ZAŁOŻYCIELSKI HUUUGE, INC.

(Zgodnie z sekcją 242 oraz 245 Prawa Spółek Stanu Delaware)

EXHIBIT A

ARTICLE I

NAME

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

ARTICLE II

REGISTERED OFFICE AND AGENT

The address of the Corporation’s registered office in the State of Delaware is 850 New Burton Road, Suite 201, in the City of Dover, County of Kent, 19904. The name of the Corporation’s registered agent at such address is Cogency Global Inc.

ARTICLE III

PURPOSE

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

ARTICLE IV

CAPITAL STOCK

4.1 Authorized Capital.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 97,752,436 shares, which shall be divided into two classes, consisting of (i) 92,752,434 shares of common stock, \$0.00002 par value per share (“**Common Stock**”) and (ii) 2 shares of preferred stock, \$0.00002 par value per share, which shall be divided into two series, consisting of 1 share of Series A preferred stock, \$0.00002 par value per share (the “**Series A Preferred Stock**”) and 1 share of Series B preferred stock, \$0.00002 par value per share (the “**Series B Preferred Stock**”) (together, the Series A Preferred Stock and the Series B Preferred Stock will be referred to herein as the “**Preferred Stock**”). The Corporation may from time to time issue Common Stock out of the authorized capital of the Corporation for such consideration as may be determined in accordance with applicable law. Following the effectiveness of the filing of this Fourth Amended and Restated Certificate of Incorporation (as the same may be amended and/or restated from time to time, the “**Restated Certificate of Incorporation**”), the Corporation shall not (i) issue any shares of its capital stock other than the Common Stock or (ii) grant any additional rights attached to the Preferred Stock other than the rights referred to in Section 4.3 and Section 5.2 below.

4.2 Dividends.

Shares of Common Stock and Preferred Stock shall be treated equally, identically and ratably, on a per share basis, with respect to any dividends or distributions as may be declared and paid from time to time by the Board of Directors out of any assets of the Corporation legally available therefor.

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

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of Preferred Stock shall be entitled to receive, prior and in preference to any distribution of assets to the holders of Common Stock, out of the assets of the Corporation available for distribution to stockholders, an amount equal to \$0.01 per share (the “**Liquidation Preference**”). Following payment in full of the Liquidation Preference, the assets of the Corporation available for distribution to its stockholders shall be distributed among the holders of shares of Common Stock and holders of shares of Preferred Stock, pro rata based on the number of shares held by each such holder.

4.4 Voting.

- (a) Voting. Each holder of shares of Common Stock, as such, and each holder of shares of Preferred Stock, as such, shall be entitled to one vote for each share of Common Stock or Preferred Stock, respectively, held by such holder. Except as otherwise expressly required by law or provided in this Restated Certificate of Incorporation, the holders of Common Stock and Preferred Stock shall vote together as a single class on all matters submitted to a vote of stockholders.
- (b) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by (i) in accordance with applicable law, by the affirmative vote of the holders of capital stock representing a majority of the voting power of all the then-outstanding shares of capital stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the General Corporation Law, and no vote of the holders of the Common Stock voting separately as a class shall be required therefor, and by (ii) the affirmative vote of the holders of at least 66⅔% of the voting power of the outstanding shares of stock of the Corporation present in person or by proxy at the meeting at which such increase or decrease is being considered and entitled to vote thereon, voting together as a single class.

4.5 Pre-emptive rights

- (a) Each holder of Common Stock (each, a “**Pre-Emptive Stockholder**”) shall have the right (a “**Pre-Emptive Right**”) to purchase its Pro Rata Portion (as defined below) of any new Equity Securities (other than Excluded Securities (as defined below)) (the “**New Securities**”) that the Corporation may from time to time propose to issue or sell to any party, unless the Corporation’s stockholders opt out of the Pre-Emptive Right under Section 4.5(b) or grant the Board of Directors the authority to exclude the Pre-Emptive Right under Section 4.5(c). For purposes of this Section 4.5, the following definitions shall apply:

“**Equity Securities**” shall mean any and all shares of Common Stock and any securities of the Corporation convertible into, or exchangeable or exercisable for, such shares, and options, warrants or other rights to acquire such shares.

“**Excluded Securities**” shall mean any Equity Securities for which there is not Pre-Emptive Right and shall consist of such Equity Securities:

- a) issued in connection with an initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, or pursuant to a prospectus approved by the competent authority under the Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on the regulated market, and repealing Directive 2003/71/EC, or substantially similar applicable non-U.S. securities law;
- b) issued for cash in any twelve (12)-month period with such number of shares of Common Stock not exceeding, in aggregate, 20% of all outstanding shares of Common Stock as of the first day of such twelve (12)-month period;
- c) issued in connection with a grant to any existing or prospective consultant, employee, officer or Director pursuant to any stock option, employee stock purchase or similar equity-based plans or other

compensation agreement, arrangement or plan;

- d) issued in connection with the exercise of any stock option or warrant outstanding before or as of the date of the admission of shares of the Corporation's Common Stock to the regulated market operated by the Warsaw Stock Exchange;
- e) issued for non-cash consideration, including in connection with any acquisition by the Corporation or any of its subsidiaries of the stock, assets, properties or business of any person;
- f) issued in connection with a stock split, stock dividend or any similar reclassification or recapitalization; or
- g) issued upon conversion of any shares of Preferred Stock.

“Pro Rata Portion” shall mean, with respect to any Pre-Emptive Stockholder, on any issuance date for the New Securities, the number of New Securities equal to the product of (i) the total number of New Securities to be issued by the Corporation on such date and (ii) the fraction determined by dividing (x) the number of shares of Common Stock owned by such Pre-Emptive Stockholder immediately prior to such issuance by (y) the total number of shares of Common Stock outstanding on such date immediately prior to such issuance.

- (b) Subject to the Section 4.5(c), the Pre-Emptive Rights granted to Pre-Emptive Stockholders under this Section 4.5 may be excluded with respect to a particular issuance of New Securities by the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the outstanding shares of stock of the Corporation present in person or by proxy at the meeting of stockholders at which such matter is being considered and entitled to vote thereon, voting together as a single class; provided, however, that no such exclusion of Pre-Emptive Rights shall be available unless (i) a proposal therefor shall have been included with the notice of the meeting at which the authorization thereof is considered and (ii) the relevant stockholder(s) proposing such exclusion or the Board of Directors shall have presented a written opinion justifying the reasons for such exclusion. A separate vote is required with respect to each issuance of New Securities in order to authorize an exclusion of Pre-Emptive Rights in accordance with this Section 4.5(b) with respect to such issuance.
- (c) The Board of Directors may be authorized to exclude Pre-Emptive Rights granted to Pre-Emptive Stockholders by an affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the outstanding shares of stock of the Corporation present in person or by proxy at the meeting at which such matter is being considered and entitled to vote thereon, voting together as a single class. Such authorization may be granted for a period of no longer than 5 years. In each case, when excluding Pre-Emptive Rights based on such authorization, the Board of Directors must present a written opinion justifying the reasons for such exclusion.
- (d) Pre-Emptive Rights granted to Pre-Emptive Stockholders by this Section 4.5 shall be subject to such procedures as may be determined from time to time by the Board of Directors in its good faith discretion.

4.6 Mandatory conversion.

- (a) Series A Preferred Stock Conversion. Immediately upon the holders of Series A Preferred Stock (i) ceasing to own, together with their affiliates, at least 50% of the aggregate number of shares of Series A Preferred Stock and Common Stock owned by such holders upon the opening of the first day of listing of the Common Stock on the regulated market operated by the Warsaw Stock Exchange, or (ii) transferring all shares of Series A Preferred Stock to any entity other than their affiliates, whichever occurs first (each a **“Series A Mandatory Conversion Event”**), then (A) all outstanding shares of Series A Preferred Stock shall automatically be converted into shares of Common Stock, at the conversion rate of 1:1 (subject to adjustment for any stock split, stock dividend, reclassification, recapitalization or like event), and (B) shares of Series A Preferred Stock so converted shall be automatically retired and shall not be reissued by the Corporation.
- (b) Series B Preferred Stock Conversion. Immediately upon the holders of Series B Preferred Stock (i)

ceasing to own, together with their affiliates, at least 10% of the aggregate number of shares of Series B Preferred Stock and Common Stock owned by such holders upon the opening of the first day of listing of the Common Stock on the regulated market operated by the Warsaw Stock Exchange, or

(ii) transferring the Series B Preferred Stock to any entity other than their affiliates, whichever occurs first (each a “**Series B Mandatory Conversion Event**”), then (A) all outstanding shares of Series B Preferred Stock shall automatically be converted into shares of Common Stock, at the conversion rate of 1:1 (subject to adjustment for any stock split, stock dividend, reclassification, recapitalization or like event), and (B) shares of Series B Preferred Stock so converted shall be automatically retired and shall not be reissued by the Corporation.

- (c) Written Notice. All holders of record of either Series A Preferred Stock or Series B Preferred Stock shall be given written notice of the occurrence of a Series A Mandatory Conversion Event or Series B Mandatory Conversion Event applicable to such holder, as the case may be. Upon a Series A Mandatory Conversion Event or Series B Mandatory Conversion Event, the Corporation shall issue to the holder(s) of the shares of Series A Preferred Stock or Series B Preferred Stock, as applicable, whose shares have been so converted one or more certificates representing the shares of Common Stock into which such shares of Series A Preferred Stock or Series B Preferred Stock have been so converted (or, if such shares are not to be certificate, shall register such shares of Common Stock in book-entry form and give any notice required by applicable law).

ARTICLE V

BOARD OF DIRECTORS

5.1 Number.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. Unless otherwise set forth herein, the total number of directors which constitute the Board of Directors of the Corporation shall be determined from time to time by a resolution adopted by the Board of Directors.

5.2 Election of Directors.

The holders of record of Series A Preferred Stock, exclusively and as a separate class and so long as a Series A Mandatory Conversion Event has not occurred, shall be entitled, by providing the Board of Directors, at or prior to each annual meeting where directors of the Corporation are to be elected, with a written consent signed by the stockholders holding a majority of outstanding shares of Series A Preferred Stock entitled to vote at such meeting, to elect one (1) director of the Corporation (the “**Series A Director**”). So long as a Series A Mandatory Conversion Event has not occurred, 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 a majority of the outstanding shares of Series A Preferred Stock, acting as a separate class, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. In addition, in accordance with applicable law, any director so elected may be removed with cause by a majority in voting power of all outstanding shares of capital stock entitled to vote thereon. If the holders of record of Series A Preferred Stock fail to elect one Series A Director, then the Series A Director position shall remain vacant until holders of record of Series A Preferred Stock elect a person to fill such position. Any vacancy occurring in the Series A Director (whether by death, removal, resignation or other cause) may be filled exclusively by the affirmative vote of the holders of a majority of the outstanding shares of Series A Preferred Stock, acting as a separate class, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. The Series A Director may not be appointed by stockholders of the Corporation other than by holders of Series A Preferred Stock, acting as a separate class.

The holders of record of Series B Preferred Stock, exclusively and as a separate class and so long as a Series B Mandatory Conversion Event has not occurred, shall be entitled, by providing the Board of Directors, at or prior to each annual meeting where directors of the Corporation are to be elected, with a written consent signed by the stockholders holding a majority of outstanding shares of Series B Preferred

Stock entitled to vote at such meeting, to elect two (2) directors of the Corporation (the “**Series B Directors**”); provided that one such Series B Director, to be qualified, shall be Anton Gauffin. So long as a Series B Mandatory Conversion Event has not occurred, 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 a majority of the outstanding shares of Series B Preferred Stock entitled to vote thereon, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of stockholders. In addition, in accordance with applicable law, any director so elected may be removed with cause by a majority in voting power of all outstanding shares of capital stock entitled to vote thereon. If the holders of record of Series B Preferred Stock fail to elect one or both Series B Directors or if a second Series B Director is elected who is not Anton Gauffin, then the relevant Series B Director position or positions shall remain vacant until holders of record of Series B Preferred Stock elect a person to fill such position. Any vacancy occurring in respect of the Series B Director who is not Anton Gauffin (whether by death, removal, resignation or other cause) may be filled exclusively by the affirmative vote of the holders of a majority of the outstanding shares of Series B Preferred Stock, acting as a separate class, given either at a special meeting of such stockholders duly called for that purpose or pursuant to a written consent of such stockholders. The Series B Director may not be appointed by stockholders of the Corporation other than by holders of Series B Preferred Stock, acting as a separate class.

The holders of shares of Common Stock exclusively shall be entitled to elect the directors of the Corporation not elected in accordance with the preceding two paragraphs, including any failure to elect such directors because of the occurrence of a Series A Mandatory Conversion Event or a Series B Mandatory Conversion Event. At any meeting held for the purpose of electing a director other than a Series A Director or Series B Director, the presence in person or by proxy of the holders of a majority of the outstanding shares of Common Stock shall constitute a quorum for the purpose of electing each such director. Any director (other than a Series A Director or Series B Director) may be removed at any time without cause by the affirmative vote of the holders of a majority of the outstanding shares of Common Stock entitled to vote thereon, voting as a single class. In addition, in accordance with applicable law, any director (other than a Series A Director or Series B Director) may be removed with cause by a majority in voting power of all outstanding shares of capital stock entitled to vote thereon. Elections of directors need not be by written ballot unless the bylaws of the Corporation (as the same may be amended and/or restated from time to time, the “**Bylaws**”) so require.

5.3 Vacancies.

Except as otherwise expressly provided herein, any newly created directorship on the Board of Directors that results from an increase in the number of directors and any vacancy occurring in the Board of Directors (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled solely by the decision of a majority of the directors then in office, although (i.e., even if) there is less than a quorum, or by the sole remaining director.

5.4 Deadlock

Each director shall have one vote on all matters presented to the Board of Directors for its consideration. If the Board of Directors considers any action that results in an equal number of the directors at the meeting voting for and against the action and such action would be effective if taken by the affirmative vote of a majority of the directors present at such meeting, then in such case the Chairman of the Board shall be entitled to cast the tie-breaking vote with respect to such action. With respect to any committees established by the Board of Directors, subject to the following sentence and unless otherwise required by law or this Restated Certificate of Incorporation, each director serving on such committee shall have one vote on all matters presented to such committee for its consideration. If such committee considers any action that results in an equal number of the directors on the committee meeting voting for and against the action and such action would be effective if taken by the affirmative vote of a majority of the members of such committee present at such meeting, then in such case the chairman of such committee shall be entitled to cast the tie-breaking vote with respect to such action.

5.5 Committee Participation

The Series A Director, if any, shall be a member of either or both of the Audit Committee and the Remuneration and Nomination Committee (when appointed in accordance with the Bylaws), provided that he or she delivers to the Board of Directors a written notice of such intent. In such event, the remaining members of the Audit Committee and the Remuneration and Nomination Committee shall be elected in accordance with the Bylaws and in a manner allowing the Corporation to comply with the requirements concerning the independence of committee members.

5.6 Board Observer

For so long as the holders of the shares of Series A Preferred Stock are entitled to designate a Series A Director, the Corporation shall allow one representative designated by the holders of a majority of the outstanding shares of Series A Preferred Stock to attend all meetings of the Board and committees thereof in a non-voting capacity, and in connection therewith the Corporation shall give such representative copies of all notices, minutes, consents and other materials, financial or otherwise, that the Corporation provides to its Board; provided, however, that the costs and expenses of such representative attending any meetings shall not be paid for or reimbursed by the Corporation; provided, further, that the Corporation reserves the right to exclude such representative from access to any material or meeting or portion thereof if the Corporation believes upon the advice of counsel that such exclusion is reasonably necessary to preserve the attorney-client privilege, to protect highly confidential information or for other similar reasons. The decision of the Board with respect to the privileged or confidential nature of such information shall be final and binding.

5.7 Matters Reserved to the Board

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, the incurrence by the Corporation of indebtedness in excess of two times (2x) its Consolidated EBITDA for the last four fiscal quarters for which financial statements are available (at the time that the incurrence of such debt is proposed) requires the approval of a majority of the directors then in office, including the Series A Director. For the purpose of this paragraph, “**Consolidated EBITDA**” means the net result of the capital group of the Corporation for the year adjusted for income tax, finance costs, finance income, and depreciation and amortization.

ARTICLE VI

AMENDMENT OF CERTIFICATE OF INCORPORATION AND BYLAWS

The Corporation reserves the right to amend or repeal any provision contained in this Restated Certificate of Incorporation in the manner prescribed by the laws of the State of Delaware and all rights conferred upon stockholders are granted subject to this reservation; provided, however, that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote or no vote, but in addition to any vote of the holders of any class or series of the stock of the Corporation required by law or by this Restated Certificate of Incorporation, the following provisions in this Restated Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the outstanding shares of stock of the Corporation present in person or by proxy at the meeting at which such an amendment, alteration, repeal or rescission is being considered and entitled to vote thereon, voting together as a single class: Article V, this Article VI, Article VII, Article VIII, Article IX, Article X and Article XI. For the purpose of this Restated Certificate of Incorporation, beneficial ownership of shares shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the “**Exchange Act**”).

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws without the assent or vote of the stockholders. Notwithstanding anything to the contrary contained in this Restated Certificate of Incorporation or any provision of law that might otherwise permit a lesser vote of the stockholders, but subject to any greater or additional vote required by this Restated Certificate of Incorporation, the Bylaws or applicable

law, the affirmative vote of the holders of at least 66 $\frac{2}{3}$ % of the voting power of the outstanding shares of the Corporation present at the meeting at which such an amendment, alteration, repeal or rescission is being considered, voting together as a single class shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the Bylaws or to adopt any provision inconsistent therewith.

As long as at least one share of Series A Preferred Stock or one share of Series B Preferred Stock is issued and outstanding, the Corporation shall not amend, alter, or repeal any provisions of the Certificate of Incorporation or Bylaws concerning rights of the holders of the shares of the Series A Preferred Stock or holders of the shares of the Series B Preferred Stock, without the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of each of the Series A Preferred Stock and the Series B Preferred Stock, respectively.

ARTICLE VII

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES; EXCULPATION

The Corporation is authorized to indemnify, and to advance expenses to, each current, former or prospective director, officer, employee or agent of the Corporation to the fullest extent permitted by Section 145 of the General Corporation Law, as the same exists or as may hereafter be amended.

To the fullest extent permitted by the General Corporation Law, as the same exists or as may hereafter be amended, no director or officer of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director or officer. If the General Corporation Law is hereafter amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of the directors or officers of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law, as so amended from time to time.

Any amendment, repeal or modification of this Article VII, or the adoption of any provision of this Restated Certificate of Incorporation inconsistent with this Article VII, shall not adversely affect any right or protection of a director, officer or other agent of the Corporation existing at the time of such amendment, repeal or modification or adoption of such inconsistent provision or increase the liability of any director, officer or other agent of the Corporation with respect to acts or omissions occurring prior to such amendment, repeal, modification or adoption of such inconsistent provision.

ARTICLE VIII

MEETINGS OF STOCKHOLDERS AND CONSENTS IN LIEU OF MEETINGS

8.1 General Provisions

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders, other than as expressly set forth in Section 5.2, Article VI and Section 8.2 hereof. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board of Directors or a duly authorized committee thereof. Except as otherwise required by law, special meetings of the stockholders of the Corporation for any purpose or purposes may be called at any time only by or at the direction of the Board of Directors (by resolution approved by a vote of the majority of the Directors eligible to vote) or the Chairman of the Board of Directors. In addition, if permitted by the Bylaws, stockholders may call or request the calling of a special meeting of stockholders in the manner described in the Bylaws and using the procedures and subject to the limitations set forth therein. Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be

designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

8.2 Reserved Matters

Notwithstanding anything contained in this Restated Certificate of Incorporation to the contrary, any amendment, alteration, or repeal of:

- a) Article 2, section 3 of the Bylaws with respect to the right of shareholders representing at least 10 percent (10%) of the total number of shares entitled to vote at the stockholder's meeting of the Corporation to request the president to call a special meeting of stockholders;
- b) Article 2, section 5 of the Bylaws with respect to the quorum required at the meeting of stockholders;
- c) Article 3, section 1 – 5 of the Bylaws with respect to the number of directors, their term of the office, appointment and dismissal and independence criteria;
- d) Article 4, section 2 of the Bylaws with respect to the Audit Committee, save for any such amendment, alteration, or repeal that is required by law or regulations applicable to the Corporation;

or the adoption of any provision of the Bylaws inconsistent therewith, shall be approved by an affirmative vote of the holders of a majority of the voting power of the outstanding shares of the Corporation entitled to vote.

ARTICLE IX

SECTION 203 OF THE GENERAL CORPORATION LAW

The Corporation shall be governed by Section 203 of the General Corporation Law.

ARTICLE X

COMPETITION AND CORPORATE OPPORTUNITIES

10.1 Non-Employee Directors.

In recognition and anticipation that members of the Board of Directors who are not employees of the Corporation or a majority-owned subsidiary thereof (“**Non-Employee Directors**”) and their respective Affiliates may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

10.2 Limitation on Duties of Non-Employee Directors.

No Non-Employee Director (including any Non-Employee Director who serves as an officer of the Corporation in both his or her director and officer capacities) nor any of his or her Affiliates (collectively, “**Identified Persons**” and, individually, an “**Identified Person**”) shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section

10.3. Subject to said Section 10.3, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

10.3 Corporate Opportunities.

The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director (including any Non-Employee Director who serves as an officer of this Corporation) if such opportunity is expressly offered to such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 10.2 shall not apply to any such corporate opportunity.

10.4 Limitation on Corporate Opportunities.

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

10.5 Definitions.

For purposes of this Article X, (i) "Affiliate" shall mean (a) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (b) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; and (ii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

10.6 Shareholders.

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

ARTICLE XI

MISCELLANEOUS

If any provision or provisions of this Restated Certificate of Incorporation 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 Restated Certificate of Incorporation (including, without limitation, each portion of any sentence of this Restated Certificate of Incorporation 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.

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (1) any derivative action or proceeding brought on behalf of the Corporation, (2) any action

asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (3) any action asserting a claim arising pursuant to any provision of the General Corporation Law or this Restated Certificate of Incorporation or the Bylaws, (4) any action to interpret, apply, enforce or determine the validity of the this Restated Certificate of Incorporation or the Bylaws or (5) any action asserting a claim governed by the internal affairs doctrine. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

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