IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DEERFIELD PRIVATE DESIGN FUND V, L.P. and DEERFIELD HEALTHCARE INNOVATIONS FUND II, L.P., Plaintiffs, v. ALCON RESEARCH, LLC, PETRICHOR OPPORTUNITIES FUND I LP, PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP, and JEANNETTE BANKES, Defendants, and AURION BIOTECH, INC., Nominal Defendant.	C.A. No. 2025-____-____

VERIFIED COMPLAINT
PURSUANT TO 8 *DEL. C.* § 225 AND FOR RELATED CLAIMS

Plaintiffs Deerfield Private Design Fund V, L.P. and Deerfield Healthcare Innovations Fund II, L.P. (together, "Deerfield" or the "Deerfield Plaintiffs"), by and through their undersigned counsel, allege based upon personal knowledge as to themselves and their own conduct and upon information and belief as to all other matters, as follows:

INTRODUCTION

1. For more than two years, Defendant Alcon Research, LLC ("Alcon") has waged an unrelenting campaign to take over Nominal Defendant Aurion Biotech, Inc. ("Aurion" or the "Company"), a promising biotechnology company in which Deerfield and Alcon are investors, at a highly discounted valuation. In support of its end goal of engineering an acquisition of Aurion on the cheap, Alcon has sought to cut off Aurion's ability to obtain financing from sources other than Alcon and sued to block Aurion's initial public offering ("IPO"). In its latest ploy, Alcon now seeks to paralyze the Company and force it onto a path that would ultimately lead to a lowball sale to Alcon by deadlocking Aurion's Board of Directors (the "Board"), acquiring a majority stock position, and amending Aurion's bylaws. Deerfield brings this action to seek a declaration that a slew of Alcon's actions over the recent holiday weekend are invalid, including (i) the appointment of a third Alcon director within minutes of the sudden Friday night resignation of Alcon's Board Chair, creating a Board deadlock; (ii) Alcon's Friday night attempt (not disclosed until the following Tuesday) to buy out another stockholder and thereby take a majority stock position, without adhering to the requirements of the voting agreement among Aurion's investors; and (iii) bylaws amendments purporting to divest Company management of significant responsibilities and assign

those responsibilities to a deadlocked Board, and to dissolve a special committee formed to address conflicts with Alcon and seek alternative sources of funds.

2. Aurion is a mid-stage biotechnology company focused on the development of regenerative therapies to restore vision. Aurion received the prestigious Prix Galien award for best start-up in biotech in 2022. Aurion's first product candidate is for the treatment of corneal edema secondary to endothelial dysfunction, a corneal disease that is responsible for blindness in millions of people worldwide. Aurion has achieved regulatory approval and launched its product commercially in September 2024 in Japan. As Aurion announced on December 18, 2024, it has also completed a Phase I/II clinical trial in the United States, the results of which were positive and even exceeded management and investor expectations.

3. In 2022, Deerfield and Alcon invested in Aurion as part of a Series C round financing. Deerfield currently holds approximately 34% of Aurion's outstanding stock on an as-converted basis, and Alcon holds approximately 40.5% of Aurion's stock on an as-converted basis.

4. Since 2022, as the Company's value has risen dramatically, Alcon has engaged in a series of maneuvers designed to enable Alcon to buy the Company at a discount. After Alcon expressed interest in an acquisition, Aurion's Board formed a special committee (the "Special Committee"), which appropriately excluded Alcon's Board representative. The Special Committee has considered a

number of acquisition and financing proposals from Alcon. But Alcon's proposals have followed a consistent pattern in attempting to limit alternative sources from which Aurion could obtain financing—even as independent valuation analyses conducted *prior* to the Company's launch of its product in Japan and successful completion of its U.S. clinical trial placed a multi-billion dollar value on the Company. Indeed, Alcon designed its proposals so that, if Aurion had accepted them, it would have been left in the financially precarious position of having no choice but ultimately to accept a lowball acquisition offer from Alcon far below the value the Company could command in an IPO or other market transaction. The Special Committee therefore rightly rejected Aurion's proposals.

5. In light of the Company's substantial value, the Special Committee determined that the best path to obtain the financing that Aurion needs to continue development of its potentially life-changing therapies is an IPO. During 2024, the full Board approved pursuing an IPO, and Aurion took significant steps to prepare for it. The Board's decision to pursue the IPO was unanimous, with the sole exception of Alcon's representative, who voted against pursuing an IPO. Alcon has sought to obstruct the IPO, because the IPO would thwart Alcon's goal of buying Aurion for itself at a discount. In October 2024, Alcon filed a lawsuit, through which it sought to leverage its consent rights to prevent an IPO. Although the Court's decision did not prevent the IPO, investor feedback during the marketing period

reflected significant uncertainty as a result of the ongoing appeal. Investor feedback was consistent—with the litigation overhang removed, Aurion would receive exceptionally strong public market support. Faced with the prospect of a near-term weak IPO, the Board decided unanimously to delay the IPO until the next cycle.

6. Unbeknownst to Deerfield at the time, on Friday, February 14, 2025, the day on which the IPO had been scheduled to price, Alcon entered into a Stock Purchase Agreement with Defendants Petrichor Opportunities Fund I LP and Petrichor Opportunities Fund I Intermediate LP ("Petrichor") to acquire Petrichor's stock in Aurion. Because Petrichor holds approximately 13.5% of the voting shares of Aurion, the transaction—which is subject to a 30-day initial waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act")—would provide Alcon with a majority (approximately 54%) of Aurion's voting stock. Importantly, the Special Committee had convened multiple times over the prior two weeks in preparation for the IPO. During those meetings, Petrichor's designated director, Patrick Lally, and Petrichor's Founder and Managing Partner and designated Board observer, Tadd Wessel, consistently confirmed Petrichor's desire to move forward with the IPO rather than negotiate a deal with Alcon.

7. That same evening, Alcon orchestrated a Valentine's Day massacre to deadlock Aurion's Board. First, the Executive Chair of the Board, Thomas Frinzi, unexpectedly and without explanation announced his resignation by

email. Mr. Frinzi has a close relationship with Alcon's CEO, David Endicott, and had multiple one-on-one conversations with Mr. Endicott and other senior Alcon representatives that focused on Aurion, as conveyed to the Board. Months before his ultimate resignation, Mr. Frinzi confided to Aurion Board member Andrew ElBardissi, M.D., that Mr. Endicott had asked Mr. Frinzi to resign. Although Mr. Frinzi apparently staved off that request for some time, he ultimately acquiesced to it. Mr. Frinzi's resignation left the Board, which previously had seven members, with only six members. A mere six minutes later, and notwithstanding the applicable HSR Act waiting period, Alcon and Petrichor—whose Board designee Mr. Lally had, only a week earlier, confirmed Petrichor's support for an IPO—sent by email a written consent purporting to replace Mr. Lally with an Alcon designee, Jeannette Bankes. As a result, if Ms. Bankes' appointment were valid, the Board would be split three-to-three between Alcon and non-Alcon designees. Given Alcon's opposition to the IPO and alternative financing sources more generally, and the rest of the Board's support, the result in all likelihood will be deadlock.

8. Over the holiday weekend on Sunday, February 16, 2025, Alcon and Petrichor executed a second written consent purporting to implement a bylaws amendment (the "Bylaws Amendment"). The Bylaws Amendment contained three principal changes: (i) it dissolved the Special Committee; (ii) it revoked the power of the Company's officers to engage in any activities related to debt or equity

financing; and (iii) it required approval of the majority of directors then in office to take a wide range of actions.

9. Dispelling any doubt about Alcon's motives for these coordinated actions, shortly after Alcon's February 14 attempt to place Ms. Bankes on the Board, Thomas Hudnall, an Alcon employee who is one of Alcon's designated directors on Aurion's Board, conveyed to Aurion's CEO that the IPO was not going to happen and that Alcon would only provide financing that would allow Alcon to purchase the Company on Alcon's terms and at a time that would be suitable for Alcon.

10. Taken together, the change in Board composition and the Bylaws Amendment, if valid, will doom the Company's ability to conduct an IPO, obtain alternative financing, or assess the market value of the Company by soliciting third parties, and also will impair the Company's ordinary course business activity. Timing is critical, because the Company currently has cash sufficient to continue operations for only a few months. Deerfield therefore seeks three forms of expedited relief through this proceeding:

11. *First*, Deerfield seeks a declaration pursuant to 8 *Del. C.* § 225 ("Section 225") that Alcon's director designee, Jeannette Bankes, is not a director of Aurion and that the February 14, 2025 written consent purporting to appoint Ms. Bankes is invalid. When evaluating a Section 225 request, the Court may

consider any issues necessary to "determine the validity of the . . . designation by which the defendant claims to hold office," including "cognizable allegations of fraud, deceit, breach of fiduciary duty." *Brown* v. *Kellar*, 2018 WL 6721263, at *6-7 (Del. Ch. 2018). As a controlling stockholder, Alcon's fiduciary duties required that it "act[] in good faith, after a reasonable investigation, to achieve a legitimate objective." *In re Sears Hometown & Outlet Stores, Inc. S'holder Litig.*, 309 A.3d 474, 484 (Del. Ch. 2024). Alcon did none of those things. Alcon's attempt to appoint Ms. Bankes was part and parcel of Alcon's scheme to obstruct Aurion's ability to conduct an IPO, otherwise obtain financing, or assess third-party market value (which Alcon would be required to evaluate in good faith as a fiduciary). These acts were intentionally designed in bad faith to further Alcon's illegitimate objective of forcing Aurion to accept an acquisition offer on prohibitive terms from Alcon. That is a breach of Alcon's duty to Deerfield as a minority stockholder, given that Alcon was attempting to act as a controlling stockholder in connection with the appointment, including by exercising Petrichor's share rights.

12. *Second*, Deerfield requests a declaration that the Bylaws Amendment was invalid for two reasons. First, the Bylaws Amendment is invalid because it was adopted in bad faith to further Alcon's breach of fiduciary duty by unreasonably constraining Alcon's ability to obtain alternative financing or even to operate in the ordinary course to achieve the illegitimate objective of ultimately

forcing a sale of the Company to Alcon at the expense of Aurion and Aurion's minority stockholders. *See In re Sears*, 309 A.3d at 484. Second, the Bylaws Amendment improperly seeks "to mandate how the board should decide specific substantive business decisions," rather than "define the process and procedures by which those decisions are made." *CA, Inc.* v. *AFSCME Emps. Pension Plan*, 953 A.2d 227 (Del. 2008).

13. *Finally*, Deerfield requests a declaration that Alcon's purchase of shares from Petrichor pursuant to the February 14, 2025 Stock Purchase Agreement is invalid, because Alcon failed to comply with the operative Aurion Biotech, Inc. Voting Agreement (the "Voting Agreement") among Aurion and the Preferred Stock holders. The Voting Agreement requires that "[n]o Stockholder shall be party to any Stock Sale"—defined in relevant part as "a transaction or series of related transactions in which a Person, or group of related Persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company"—"unless all holders of Preferred Stock are allowed to participate in such transaction." Because Deerfield was not invited to participate, and indeed—despite repeated requests to Alcon—has not even been informed as to the terms of the transaction, Alcon and Petrichor failed to comply with the Voting Agreement, and the transaction should be invalidated.

JURISDICTION

14. This Court has subject matter jurisdiction over this case pursuant to 8 *Del. C.* § 225 and 8 *Del. C.* § 111.

15. This Court has jurisdiction over Alcon and Aurion because they are Delaware corporations. This Court has jurisdiction over Ms. Bankes, who previously was and purports to be the director of a Delaware corporation.

PARTIES AND RELEVANT NON-PARTIES

16. The Deerfield Plaintiffs are investment funds incorporated in Delaware, and are affiliates of Deerfield Management Company, L.P. ("Deerfield Management"), a private investment firm headquartered in New York. Deerfield Management specializes in healthcare and life sciences investments, including biotechnology, medical technology, and pharmaceuticals. The Deerfield Plaintiffs are investors in Aurion, and together hold 50% of Aurion's Series C Preferred Stock. Deerfield's investment amounts to approximately 34% of Aurion's outstanding stock.

17. Defendant Alcon is a Delaware corporation headquartered in Fort Worth, Texas, and is a subsidiary of Alcon Inc. Alcon Inc. focuses on developing and commercializing eye care technologies. It occasionally invests in emerging eye care companies for strategic purposes, which can facilitate an acquisition by Alcon if the company is successful. Alcon is an investor in Aurion,

and holds approximately 40.5% of Aurion's outstanding stock. Alcon participated in Aurion's Series C financing, and holds approximately 40.9% of Aurion's Series C Preferred Stock. Alcon also holds Series A Preferred Stock and Series B Preferred Stock, which Alcon acquired through secondary transactions. The foregoing amounts do not reflect the Series B Preferred Stock that Alcon agreed to acquire pursuant to its recent Stock Purchase Agreement with Petrichor.

18. Defendants Petrichor Opportunities Fund I LP and Petrichor Opportunities Fund I Intermediate LP are affiliates of Petrichor Healthcare Capital Management, a New York-based private equity firm specializing in the healthcare sector. Petrichor is an investor in Aurion, and holds approximately 13.5% of Aurion's outstanding stock, comprised of Series B Preferred Stock. Until February 14, 2025, Petrichor also held the Series B Director seat on Aurion's Board. On February 14, 2025, Petrichor entered into a Stock Purchase Agreement with Alcon, pursuant to which Petrichor agreed to sell its Aurion stock to Alcon. That agreement has not yet closed due to the HSR Act 30-day initial waiting period. Petrichor nevertheless transferred its Board seat to Alcon at the time of signing, as described below.

19. Defendant Jeannette Bankes purportedly has been appointed as a member of Aurion's Board as of February 14, 2025. Ms. Bankes is Senior Vice President, President, Global Franchises at Alcon. On February 14, 2025, Alcon and

Petrichor issued a written consent, which purported to remove Mr. Lally as a director and appoint Ms. Bankes to fill the resulting vacancy. Alcon previously appointed Ms. Bankes to Aurion's Board in connection with the Series C financing; however, Ms. Bankes was removed in 2024.

20. Non-Party Aurion is a Delaware biotechnology company headquartered in Seattle, Washington. Aurion specializes in regenerative therapies to restore vision. Aurion's lead product candidate is a first-of-its-kind treatment for corneal edema secondary to endothelial dysfunction, a disease responsible for causing blindness in millions of people. The treatment has received regulatory approval in Japan and has completed Phase I/II clinical trials in the United States. The U.S. Food and Drug Administration awarded Aurion a Breakthrough Therapy designation and a Regenerative Medicine Advanced Therapy designation, which are designations awarded only rarely and to the most promising therapies.

21. Non-Party Thomas Frinzi was the Executive Chair of Aurion's Board, until Mr. Frinzi suddenly resigned on February 14, 2025. Mr. Frinzi is the former Worldwide President, Surgical, Johnson & Johnson Vision business. Although Mr. Frinzi was nominally an independent director, he maintains a close relationship with Alcon, including with Alcon CEO David Endicott, and was important in bringing Alcon into the Series C investment led by Deerfield. Mr. Frinzi has multiple business relationships with Alcon. Mr. Frinzi was President

and CEO of WaveTec Vision, which was acquired by Alcon in 2014, and he currently is President and CEO of STAAR Surgical Company, which Alcon approached regarding an acquisition in 2024. In addition, Mr. Frinzi is Executive Chairman of ViaLase, in which Alcon is a lead investor. Mr. Frinzi and Mr. Endicott have been golf partners, as well as regularly served together on industry conference panels, including: (a) "Masters of the Industry" at the OIS@AAO meeting in 2018; (b) "Innovation Leadership Panel" at the Ophthalmology Technology Summit in 2019; and (c) "A View from the Top: Inspiring Innovation in Ophthalmology" at the Ophthalmology Futures Forums in Barcelona, Spain in 2024. Prior to his resignation, Mr. Frinzi had directly negotiated with Alcon regarding a potential transaction with Aurion, despite a firm directive by the Special Committee that any and all discussions regarding such negotiations should go through the Company's financial advisor, Centerview Partners. Months before his ultimate resignation, Mr. Frinzi confided to Dr. ElBardissi that Mr. Endicott had asked Mr. Frinzi to resign.

22. Non-Party Andrew ElBardissi, M.D., is a member of Aurion's Board and the Special Committee. Dr. ElBardissi is a Partner on Deerfield Management's Medical Technologies team. Dr. ElBardissi was appointed to the Board by Deerfield.

23. Non-Party Greg Kunst is a member of Aurion's Board and the Special Committee. Mr. Kunst serves as the Chief Executive Officer of Aurion.

Mr. Kunst was appointed as a Board member in accordance with the December 13, 2022 Amended and Restated Voting Agreement, which designates a Board seat for Aurion's CEO.

24. Non-Party Christine McCauley is a member of Aurion's Board. Ms. McCauley is Corporate Vice President, Global Human Resources, for Edwards Lifesciences. Ms. McCauley serves as an independent director.

25. Non-Party Thomas Hudnall is a member of Aurion's Board. Mr. Hudnall is Vice President, Corporate Legal, and Assistant Corporate Secretary at Alcon. Mr. Hudnall was appointed to the Board by Alcon in 2024.

26. Non-Party Joe Rappon is a member of Aurion's Board. Mr. Rappon is Vice President and Head of the R&D Pharma Platform at Alcon. Mr. Rappon was appointed to the Board by Alcon in October 2024, and became Alcon's second Board representative. Alcon obtained Mr. Rappon's seat after acquiring all of the outstanding Series A Preferred Stock (as well as additional stock) from Sightlife I, LLC and Sightlife II, LLC.

27. Non-party Patrick Lally was, prior to his purported replacement by Ms. Bankes on February 14, 2025, a member of Aurion's Board and the Special Committee. Mr. Lally was appointed to the Board by Petrichor in 2022. Petrichor is entitled to designate one individual as the Series B Director pursuant to the Voting Agreement. Mr. Lally is a partner at Petrichor Healthcare Capital Management.

FACTUAL BACKGROUND

A. The Series C Investment

28. In early 2022, Aurion sought to raise additional capital to advance the clinical development of its breakthrough therapy for treatment of corneal edema. Deerfield led a Series C fundraising round that raised over $120 million. Deerfield purchased 50% of the Series C Preferred Stock, and Alcon purchased approximately 36%.

29. In connection with the Series C fundraising, Aurion agreed to implement certain protections for Series C investors. Aurion's Amended and Restated Certificate of Incorporation (the "Charter") provides that, unless 66.7% of Series C Preferred Stock investors consent, an act that "amend[s], alter[s] or repeal[s] any provision of . . . [the] Bylaws of the Corporation in a manner that adversely affects the powers, preferences or rights of the Series C Preferred Stock" "shall be null and void ab initio, and of no force and effect." (Ex. A §§ 2.5.1, 3.4, 3.4.1.)[1] The Charter also provides Series C investors with consent rights over certain corporate actions, *e.g.*, changes in the number of authorized shares or any purchase, redemption, or acquisition of shares. (*Id.* § 3.4.) Notably, the Charter does not provide Series C investors with consent rights regarding IPOs. (*See id.*) Both Deerfield Management and Alcon hold consent rights under the Charter.

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[1] Attached hereto as Exhibit A is a copy of Aurion's Charter.

30. The Charter specifically contemplated an IPO and its effect on Series C Preferred Stock. Aurion's Charter provides that in the event of a "Qualified IPO," all of Aurion's outstanding Preferred Stock (including Series C Preferred Stock) will automatically convert to common stock. (*Id.* § 5.1.) A "Qualified IPO" is an IPO in which shares are sold at no less than $15.04 per share and that results in at least $90 million of gross proceeds. (*Id.*)

31. In connection with the Series C fundraising round, Aurion also amended its Voting Agreement. The Voting Agreement specifies the composition of the Board: (a) one director designated by each of Deerfield, Alcon, Petrichor, and Sightlife II, LLC (whose seat was previously purchased by Alcon); (b) Aurion's CEO; and (c) two independent directors "who are mutually acceptable to the other members of the Board, which individuals shall initially be Tom Frinzi and Christine McCauley." (Ex. B § 1.2.)[2] Alcon also requested that Aurion add a provision to the agreement providing that Alcon would not be permitted to exercise voting rights "in excess of 19% of the Company's outstanding Common Stock on an as-converted basis" (the "Voting Rights Provision"). (*Id.* § 7.20.)

[2] Attached hereto as Exhibit B is a copy of the February 14, 2025 written consent executed by Petrichor and Alcon.

B. Aurion Rejects Alcon's Acquisition Attempts, and Instead Decides To Pursue an IPO

32. Following Alcon's Series C investment, Alcon made multiple attempts to acquire or control Aurion—all of which the Special Committee rejected due to unfavorable terms.

33. Alcon first expressed interest in acquiring Aurion in late 2022, shortly after the Series C investment. In response, the Board voted to establish a Special Committee to ensure fairness in light of Alcon's presence on the Board and to conduct a formal bidding process. Aurion received multiple non-binding indications of interest from various parties, including Alcon, as part of the process. As part of the negotiations regarding Alcon's non-binding term sheet, Alcon's CEO indicated to Aurion that Alcon would exercise its consent rights to block an offer from any party other than Alcon, unless the other party's offer was significantly superior to Alcon's offer. The Special Committee determined that a non-binding term sheet submitted by Alcon was not sufficiently attractive to warrant further consideration.

34. Alcon put together multiple additional financing proposals indicating that its desire was to ultimately acquire Aurion at a time and stage of development that was suitable for Alcon. Consistent with this theme and Alcon's approach during the earlier negotiations, Alcon's proposals sought to limit Aurion's options to obtain financing from other parties, which would have been more

beneficial to the Company and to Deerfield and other stockholders. Due to these restrictions, Alcon's proposals risked putting Aurion in a financially precarious position, in which the Company would ultimately be forced to accept a lowball acquisition offer from Alcon.

35. At the same time, independent valuation analyses assigned a multi-billion dollar value to the Company. Importantly, these analyses were conducted *before* the Company launched its product in Japan and successfully completed of its U.S. clinical trial—which substantially increased the Company's value. Indeed, even Alcon's own financial advisors have estimated the Company's value at well over a billion dollars.

36. In late 2023, Alcon proposed to provide interim financing to Aurion in exchange for the option to purchase Aurion at a pre-negotiated price. Even though Alcon would have retained discretion to exercise this option, despite months of negotiation, Alcon insisted on triggers for releasing financing that were inconsistent with pre-specified development activities and thus unachievable. As a result, Alcon would have received near-total control over alternative funding options. Alcon's terms would have severely restricted Aurion's financial flexibility, positioning Alcon to starve Aurion of funding and acquire Aurion on Alcon's own terms and timeline. There was no reason for such a valuable Company, with such

bright prospects, to accept such onerous terms, and the Special Committee rejected Alcon's proposals.

37. In light of the Company's substantial value and the risks posed by Alcon's proposals, the Special Committee continued to explore potential alternatives. These included obtaining interim financing from other sources and a potential IPO. By March 2024, Aurion engaged in discussions with multiple investment banks, whose analyses indicated that Aurion was well-positioned for an IPO. J.P. Morgan, for example, advised that Aurion was "in rarefied air in biotech" and that late 2024 would be an ideal time for Aurion to go public.

38. In June 2024, Aurion's Board authorized the Special Committee to pursue an IPO. The Board's decision was unanimous, except for a lone dissent: Ms. Bankes, the director appointed by Alcon. Ms. Bankes stated that "we" were voting against the resolutions that approved moving forward with the IPO. On information and belief, Ms. Bankes' reference to "we" was a reference to Alcon, indicating that Ms. Bankes was voting based on Alcon's wishes, rather than her own good faith decision. Board members regarded her statement as sufficiently notable that it was recorded in the minutes for the June 2024 Board meeting.[3]

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[3] Following the June 2024 meeting, Alcon removed Ms. Bankes from her seat and instead appointed Thomas Hudnall. Alcon now purports to re-appoint Ms. Bankes pursuant to the February 14, 2025 written consent.

39. In the coming months, Alcon continued to oppose an IPO. In connection with discussions about interim financing during the period preceding the IPO, Alcon asserted that Aurion could not conduct an IPO without Alcon's consent. Despite multiple requests, Alcon and its counsel did not explain why consent was needed for a "Qualified IPO" under Aurion's Charter. In addition, Alcon refused to approve an expansion of Aurion's option pool to ensure that Aurion could provide appropriate incentive compensation to employees, which on information and belief was meant to decrease the Company's valuation in connection with a potential acquisition.

40. Aurion made substantial progress toward an IPO, although Alcon threatened to intervene. In discussions between Thomas Frinzi and Alcon's CEO David Endicott, as conveyed to the Board, Mr. Endicott said Alcon would use any and all efforts to obstruct an IPO and wreak havoc on Aurion and its stockholders. Nonetheless, in the absence of a credible alternative proposal from Alcon, the Board determined that an IPO was the best path forward to advance the Company's development efforts. By August 2024, Aurion selected J.P. Morgan and Bank of America as underwriters and began negotiating the remaining syndicate and deal terms. In September, Aurion held its first full working group meeting for the IPO, which was attended by management, accountants, legal counsel, and bankers. On

October 18, 2024, Aurion finalized its initial registration statement on Form S-1 and submitted it confidentially to the SEC.

C. Alcon Initiates Litigation To Try To Block Aurion's IPO

41. On October 28, 2024, Alcon sued Aurion to derail the anticipated IPO. Through the lawsuit, Alcon sought to create uncertainty among investors about Aurion's ability to go through with the IPO, and ultimately to force Aurion into a sale to Alcon.

42. Alcon's complaint sought declaratory relief that (i) Aurion was required to obtain the consent of Series C stockholders as a prerequisite to pursuing the IPO, and (ii) Alcon was entitled to unilaterally rescind the Voting Rights Provision and vote the full number of Alcon's shares. After Aurion pursued a reverse stock split to make shares of common stock available for use in the IPO, Alcon amended its complaint to allege that the reverse stock split also required the consent of Series C stockholders. On November 4, 2024, Aurion filed counterclaims requesting a declaration that the consent of Series C stockholders was not required to pursue the IPO, and that Alcon could not unilaterally rescind the Voting Rights Provision, among other requested relief.

43. A trial was held on January 2 and 14, 2025.

44. On January 27, 2025, the Court issued its decision. *See Alcon Rsch., LLC* v. *Aurion Biotech, Inc.*, 2025 WL 312371 (Del. Ch. Jan. 27, 2025). The

Court ruled in Aurion's favor that the Company did not need Series C stockholder consent for either the proposed IPO or the reverse stock split. The Court rejected Alcon's argument that a charter amendment following the IPO was an event subject to Series C stockholder consent. Because Series C Preferred Stock would be converted to common stock prior to the charter amendment, Series C consent rights would no longer exist at the relevant time. The Court also declined to analogize the reverse stock split to events requiring stockholder consent, ruling that the reverse split was not an increase in authorized shares or an acquisition, purchase, or redemption of shares. The Court ruled that Alcon could revoke the Voting Rights Provision, although that ruling standing alone did not enable Alcon to block the IPO, in light of the Court's ruling that Alcon did not have a consent right with respect to the IPO.

45. The parties have appealed the decision to the Supreme Court of Delaware, and the appeal currently is pending.

D. Uncertainty Caused by Alcon's Litigation Necessitates Rescheduling the IPO

46. Even though Aurion largely prevailed in the litigation, Alcon's lawsuit had the desired effect of delaying the IPO.

47. Aurion had planned to price its IPO on February 14, 2025. As the pricing deadline approached, general market conditions remained favorable, and Aurion's investment bankers marketed the IPO to potential investors. Despite

significant interest in the fundamentals of the Company, with many expressing that this would be one of the higher quality IPOs of a biotech candidate seen in years, some of the feedback from potential investors was concerning. Investors expressed unease regarding the uncertainty associated with the pending appeal. Investors conveyed that, until the appeal was resolved, they did not want to commit the time and resources necessary to prepare for an IPO. In light of the appeal timeline, investors viewed the short timeframe from pre-marketing to IPO as creating potential risk to what otherwise would have been a highly successful public offering.

48. At the time, the Delaware Supreme Court was expected to issue its decision on or around February 12, 2025, which would have left only a few days between the Supreme Court's decision and the IPO. In light of investors' preference to delay engagement until after the appeal decision issued, this timeline was problematic. Aurion's investment bankers believed the timeline likely would depress demand and lower the price for the IPO.

49. Faced with the prospect of an IPO that appeared likely to fall short of Aurion's true value, on February 6, 2025, the Special Committee voted unanimously to postpone the IPO—although its members, including Petrichor's Board designee Mr. Lally, expressed their continued support for an eventual IPO. In addition, Petrichor's Founder and Managing Partner and designated Board observer, Tadd Wessel, participated in Special Committee meetings and strongly

indicated his desire to move forward with an IPO. Assuming that Alcon is not successful in obstructing the effort, Aurion is expected to re-audit its financials, as is required, and to proceed with an IPO during the next cycle later this year.

E. Alcon Enters Into an Agreement With Petrichor To Acquire a Majority Stake in Aurion

50. On February 14, 2025, the same day that the IPO had been expected to price, Alcon entered into a Stock Purchase Agreement with Petrichor. Under the Stock Purchase Agreement, Alcon agreed to purchase Petrichor's shares of Aurion.

51. The Petrichor transaction, if completed, would result in Alcon acquiring approximately 54% of the outstanding shares of Aurion and would give Alcon majority ownership of Aurion. Upon completion of the sale, as the majority holder of Series B Preferred Stock, Alcon would assume the Series B Director seat on Aurion's Board that is currently held by Petrichor. (Ex. A § 3.2; Ex. D § 1.2.)[4]

52. Alcon did not notify Deerfield or Aurion of the transaction when it was under negotiation or even when the Stock Purchase Agreement was executed. Aurion only learned of the transaction four days later when Alcon sent Aurion a notice required in connection with Alcon's HSR Act filing. *See* 16 C.F.R. § 803.5(a)(1).

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[4] Attached hereto as Exhibit D is a copy of Aurion's Amended and Restated Voting Agreement, dated December 13, 2022.

53. Alcon also failed to comply with its obligations to minority stockholders under the Voting Agreement. When any person "acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company . . . all holders of Preferred Stock [must be] allowed to participate in such transaction." (Ex. D §§ 3.1, 3.4.) In purporting to sell a 54% voting interest in the Company, Petrichor and Alcon triggered this provision, but did not accord to Deerfield the right to participate in the transaction as required by the Voting Agreement. On February 19, 2025, Deerfield requested that Alcon provide information regarding the transaction with Petrichor, including a copy of the Stock Purchase Agreement. However, Alcon refused.

54. Because the transaction is subject to a 30-day initial waiting period under the HSR Act, it has not closed as of the time of this Complaint. Disregarding the statutorily required waiting period, however, Alcon has taken significant actions to assert its control of Aurion.

F. Alcon Creates a Deadlock on Aurion's Board

55. On February 14, 2025, the same day as the Stock Purchase Agreement, Alcon orchestrated a realignment in Aurion's Board. Until that Friday evening, the Board had seven members; two of them were Alcon representatives. Following the execution of Alcon's plot to deadlock the Board on February 14, only six Board members remain; three of them purportedly are Alcon representatives.

56. At 9:36 p.m. E.T. on the evening of Friday, February 14, the Executive Chairman of Aurion's board, Thomas Frinzi, sent an email to the other Board members announcing his resignation. To Deerfield's knowledge, Mr. Frinzi had not previewed his resignation, and Mr. Frinzi's email did not provide any explanation for why he was resigning, let alone at that hour on a Friday evening. As a result of Mr. Frinzi's resignation, Aurion's Board went from seven members to six members: (1) Greg Kunst (Aurion's CEO); (2) Christine McCauley (an independent member); (3) Andrew ElBardissi (Deerfield's representative); (4) Thomas Hudnall (Alcon's representative); (5) Joe Rappon (Alcon's representative); and (6) Patrick Lally (Petrichor's representative).

57. Six minutes after Mr. Frinzi's resignation, at 9:42 p.m. E.T., Petrichor sent by email to Aurion's Board a written consent signed by Petrichor and Alcon. (Ex. B.) The written consent purported to remove Petrichor's representative, Patrick Lally, as the director appointed by Series B stockholders. It further purported to designate Jeannette Bankes, Alcon's Senior Vice President, President, Global Franchises, as the new Series B director. The written consent did not provide any explanation for the change, except that "Petrichor I desire[d] to remove Patrick Lally" and "desire[d] to designate Jeannette Bankes." (*Id.* at 1-2.) The written consent did not reference the Stock Purchase Agreement between Alcon and

Petrichor, which Alcon and Petrichor had kept secret from the Company and Deerfield.

58. On information and belief, Alcon and Mr. Frinzi had an agreement, whether written or oral, that Mr. Frinzi would resign in connection with the Stock Purchase Agreement to facilitate Alcon's plan to deadlock the Board and ultimately take control of and sell the Company to itself. Such agreement, and Mr. Frinzi's resignation under these circumstances, clearly constituted a breach of Mr. Frinzi's fiduciary duties to the Company and its stockholders, which was aided and abetted, and indeed induced, by Alcon.

59. As a result of Alcon's actions, the Board is now purportedly divided between three Alcon representatives and three non-Alcon representatives.

60. The impact of these changes, if not invalidated by this Court, will in all likelihood be significant, particularly with respect to the IPO. Because all Board members except Alcon's designated representatives had previously favored an IPO, the new composition is almost certain to produce deadlock. The three non-Alcon directors are likely to continue to support an IPO as in the best interests of Aurion; the three Alcon directors will undoubtedly continue to oppose an IPO and actions that would facilitate one, or indeed any alternative to a lowball sale to Alcon. Importantly, the Company has limited cash to fund operations, and Alcon's changes almost certainly would lead to a solvency crisis. That is exactly how Alcon seeks

once again to engineer a sale or financing with Alcon as the only available acquirer. If upheld, the current Board composition therefore is likely to impair the Company's longstanding plans to proceed with an IPO and ultimately to hand the Company over to Alcon at a discount.

61. In the course of Aurion's and Alcon's prior negotiations, Alcon has sought to limit Aurion's financing options, in an effort to make Aurion dependent on Alcon and increase the likelihood that it would ultimately be forced to agree to an acquisition by Alcon on terms favorable to Alcon. An evenly split board would effectively give Alcon the ability to veto strategic financing transactions, preventing Aurion from pursuing financing or other alternatives that would benefit Aurion and its non-Alcon stockholders, while pushing Aurion into a lowball sale to Alcon.

G. Alcon Orchestrates a Bylaws Amendment That Purports To Disband the Special Committee and To Limit Aurion's IPO and Financing Activities

62. If there were any doubt that Alcon's intention in orchestrating the February 14, 2025 Board changes and deadlock was to impair Aurion's ability to operate (particularly with respect to pursuing an IPO or other non-Alcon alternatives), that doubt was put to rest on February 16, 2025, when by written consent Alcon and Petrichor purported to implement a Bylaws Amendment. Particularly in the context of a divided and deadlocked Board, the Bylaws

Amendment would obstruct Aurion's ability to pursue an IPO or make alternative financing arrangements, or receive fair market third-party offers to acquire the Company, and is likely to significantly burden the Company's ability to run its day-to-day business.

63. The Bylaws Amendment purports to make three principal changes to Aurion's current bylaws: (i) dissolution of the Special Committee, which had been designed to enable Aurion's consideration of strategic alternatives to a transaction with Alcon; (ii) the revocation of officers' power to engage in debt or equity financing activities; and (iii) the requirement of a majority of directors then in office to approve multiple Company actions, including actions affecting Aurion's day-to-day activities and actions that could involve a conflict with Alcon.

64. *First*, Section 3.5 of the Bylaws Amendment, titled "Existing Committees," provides that "[a]ny committee of the Board and any subcommittee in existence at the time of the effectiveness of the amended and restated bylaws . . . shall cease to exist and any and all power and authority granted to any such committee or subcommittee shall be withdrawn and rescinded." (Ex. C, Am. Bylaws § 3.5.)[5] This provision would result in the dissolution of the Special Committee,

[5] Attached hereto as Exhibit C is a copy of the February 16, 2025 written consent executed by Alcon, which included as an attachment a redlined copy of Aurion's Amended and Restated Bylaws showing the changes made by Alcon.

which was formed for the purpose of enabling Aurion to consider strategic alternatives to a transaction with Alcon. The Special Committee's role has included management of the IPO process, and its dissolution would hamstring both the IPO process and Aurion's ability to pursue other strategic alternatives. On information and belief, the principal purpose of Section 3.5 was to dissolve the Special Committee and to give Alcon, which clearly has a serious conflict of interest, power over the Company's financing options and ultimately to force a sale of the Company to Alcon.

65. *Second*, Section 4.6 of the Bylaws Amendment, titled "Authority and Duties of Officers," provides that "unless expressly authorized by action of the Board . . . no officer or agent of the Company shall have the power or authority to approve or take any action in furtherance of any debt or equity financing activities, including, without limitation, any initial public offering of securities of the Company." (Ex. C, Am. Bylaws § 4.6.) While highlighting the IPO, the provision as written extends more broadly, and would prevent Aurion's CEO, CFO, and other finance professionals from engaging in ordinary course business activity necessary to manage the finances of the Company and thereby solidify Alcon's control over the Company's ability to obtain financing. This would impose a significant operational constraint on Aurion, particularly given its current need for financing, including in the very near term.

66. *Finally*, the Bylaws Amendment provides that "the Board shall not take" or "delegate to any officer, employee or agent of the Company" the authority to take certain actions "without the approval of a majority of the directors then in office at a duly noticed meeting." (Ex. C, Am. Bylaws § 2.13.) The Bylaws Amendment subjects a laundry list of actions to this majority Board approval requirement, which in the context of the deadlocked Board means that few, if any, of these actions will be viable. The covered actions nominally extend to day-to-day activities that are core functions of officers and employees, including, for example, any action to (a) "sell, lease, exchange license, [or] sell . . . any properties, assets or rights or any interest therein"; (b) "approve any sale, license, or other transfer of any intellectual property, or enter into or grant any royalty streams related thereto"; or (c) "authorize any officer to exercise any power or authority not expressly delegated thereto pursuant to these bylaws." (*Id.* § 2.13(iii), (iv), (xiii).)[6]

67. On information and belief, the Bylaws Amendment was orchestrated by Alcon and the result of an agreement between Alcon and Petrichor in connection with the February 14, 2025 Stock Purchase Agreement and the

---

[6] Notwithstanding reference in the section title to "Material Actions," and a focus on a number of actions related to an IPO, no materiality limitation is included in the text of the provision itself.

replacement of the Petrichor representative on Alcon's Board with a third Alcon representative.

68. The written consent that implemented the Bylaws Amendment referred to the February 14, 2025 resignation of Mr. Frinzi, and stated that "as a result [of Mr. Frinzi's resignation], there are currently six directors serving on the Board, which could cause a deadlock on certain votes." (Ex. C at 1.) Alcon and Petrichor therefore purportedly "determined it [was] necessary" to amend the bylaws for two reasons: "to (i) ensure that all directors have an adequate opportunity to consider, deliberate on and approve acts and transactions that the undersigned stockholders believe would be material to the Company, and (ii) protect [Alcon's and Petrichor's] rights as owners of a majority of the voting power of the outstanding capital stock of the Company." (*Id.*)

69. These reasons were pretextual. On information and belief, the Bylaws Amendment was not undertaken in good faith, but instead was intended to limit Aurion's ability to engage in an IPO or obtain other financing and to eventually necessitate a less favorable transaction with Alcon. The Bylaws Amendment also was unreasonable, because it would unduly impair Aurion's ability to obtain financing at a critical time in Aurion's lifecycle, when (a) it is important for Aurion to invest in the development of a promising new treatment and (b) without additional

financing during the coming months Aurion will be unable to continue even on its current course.

COUNT I

(Declaratory Relief Under 8 Del C. § 225 Against Defendants Alcon and Ms. Bankes: The Appointment of Ms. Bankes as Director Was Invalid)

70. The allegations of the foregoing paragraphs are incorporated by reference as if set forth fully herein.

71. Pursuant to 8 *Del. C.* § 225, "[u]pon application of any stockholder or director . . . the Court of Chancery may hear and determine the validity of any . . . appointment [or] removal . . . of any director . . . of any corporation."

72. In reviewing applications pursuant to 8 *Del. C.* § 225, the Court of Chancery may consider any issues necessary to "determine the validity of the . . . designation by which the defendant claims to hold office," including "cognizable allegations of fraud, deceit, breach of fiduciary duty, and other claims that 'if meritorious, would help the court decide the proper composition of the corporation's board or management team.'" *Brown* v. *Kellar*, 2018 WL 6721263, at *6-7 (Del. Ch. 2018). In connection with the appointment, Alcon was required to "act[] in good faith, after a reasonable investigation, to achieve a legitimate objective." *In re Sears Hometown & Outlet Stores, Inc. S'holder Litig.*, 309 A.3d 474, 516 (Del. Ch. 2024).

73. The February 14, 2025 written consent purporting to appoint Jeannette Bankes is invalid because, on information and belief, it was undertaken in bad faith in furtherance of Alcon's scheme to block the proposed IPO with the illegitimate objective of owning Aurion, but without paying the price that Aurion would command in a competitive sale process. The appointment of Ms. Bankes was part and parcel of Alcon's scheme, which on information and belief also included the Bylaws Amendment and securing the resignation of Mr. Frinzi. The appointment of Ms. Bankes as part of this scheme breached Alcon's fiduciary duties to Aurion and its other stockholders, and Alcon aided and abetted a breach of Mr. Frinzi's fiduciary duties in securing his resignation in furtherance of its scheme.

74. The Court should accordingly declare pursuant to 8 *Del. C.* § 225 that (a) Ms. Bankes is not a director of Aurion and (b) Alcon may not appoint a director to replace Ms. Bankes until both of the following have occurred: (i) a new independent director, to be proposed by Deerfield, is appointed to fill the seat vacated by Mr. Frinzi; and (ii) all the waiting periods applicable to Alcon's share purchase under the HSR Act have expired. Requiring that Alcon wait to appoint a new director until the Court has appointed an independent director proposed by Deerfield is equitable. Because, on information and belief, Alcon was responsible for securing Mr. Frinzi's resignation, Alcon should not benefit from the vacancy of Mr. Frinzi's former seat.

COUNT II

(Declaratory Relief Against Defendant Alcon Concerning the Invalidity of the Bylaw Amendments)

75. The allegations of the foregoing paragraphs are incorporated by reference as if set forth fully herein.

76. The Delaware Declaratory Judgment Act gives courts the "power to declare rights, status and other legal relations whether or not further relief is or could be claimed." 10 *Del. C.* § 6501.

77. There is a justiciable controversy regarding the validity of the Bylaws Amendment.

78. The Bylaws Amendment is invalid for two reasons, each of which is an independently sufficient basis to invalidate the Bylaws Amendment: (a) Alcon adopted the Bylaws Amendment in bad faith and not in a reasonable pursuit of a legitimate corporate objective; and (b) the Bylaws Amendment would impermissibly decide substantive business decisions, not the process by which those decisions are made.

A. The Bylaws Amendment Was Adopted in Bad Faith, and Alcon Did Not Reasonably Pursue a Legitimate Corporate Objective.

79. The Bylaws Amendment is subject to enhanced scrutiny because Alcon was a controlling stockholder, at least as to the Bylaws Amendment. *See In re Sears*, 309 A.3d at 484.

80. For the Bylaws Amendment to be valid, Alcon was required to "act[] in good faith, after a reasonable investigation, to achieve a legitimate objective." *Id.* at 516. Alcon did none of these things.

81. The Bylaws Amendment was adopted by Alcon in bad faith, with the purpose and effect of facilitating Alcon's breach of fiduciary duty and in pursuit of its ultimate of objective of owning Aurion, but without paying the price that Aurion would command in a competitive sale process. The Bylaws Amendment has the further purpose and effect of interfering with (a) the Special Committee, which has been pursuing an IPO in the interest of Aurion and all of its stockholders; and (b) the authority and effectiveness of Aurion's officers. Because none of these objectives were legitimate, Alcon did not have a proper corporate objective in pursuing the Bylaws Amendment. Nor were Alcon's actions reasonable in relation to any such proper corporate objective. On information and belief, Alcon did not pursue a reasonable investigation with respect to the Bylaws Amendment. Alcon therefore cannot survive the enhanced scrutiny standard applicable to its assertion of control to change the status quo in pursuit of its objectives.

82. The Bylaws Amendment was unreasonable, constituted an inequitable manipulation of the corporate machinery by a fiduciary, and was fundamentally contrary to the overarching statutory scheme.

83. Alcon exercised its voting power with a flagrant disregard for the interests of other stockholders and for the principles of good corporate governance. The Bylaws Amendment was an abuse of Alcon's voting power and is void or voidable.

B. The Bylaws Amendment Would Impermissibly Decide Substantive Business Decisions.

84. The Bylaws Amendment violates the "well-established" principle that the "proper function of bylaws is not to mandate how the board should decide specific substantive business decisions, but rather, to define the process and procedures by which those decisions are made." *CA, Inc.* v. *AFSCME Emps. Pension Plan*, 953 A.2d 227 (Del. 2008). "[W]hether or not a bylaw is process-related must necessarily be determined in light of its context and purpose," and the "intent and effect of a bylaw" are relevant in determining its validity. *Gorman* v. *Salamone*, 2015 WL 4719681, at *5 (Del. Ch. 2015).

85. Under these principles, the purported amendment to Section 3.5 is invalid because it provides that "[a]ny committee of the Board and any subcommittee in existence at the time of the effectiveness of the [Bylaw Amendments] . . . shall cease to exist . . . ." Rather than outlining a process for dissolving committees or subcommittees, the amendments to Section 3.5 improperly "mandate how the board should decide specific substantive business decisions." *Id.* at *5. The Bylaws Amendment would require that the Board dissolve the Special

Committee. Bylaws that "expressly say that 'the board' . . . must take particular action are invalid." *West Palm Beach Firefighters' Pension Fund* v. *Moelis & Co.*, 311 A.3d 809, 860 (Del. Ch. 2024).

86. The purported amendments to Sections 2.13 and 4.6, to the extent they would limit director or officer authority to continue to pursue an IPO or other financing alternatives, are similarly invalid. On October 17, 2024, Aurion's Board decided to pursue an IPO, and authorized and directed Aurion's officers to take actions in furtherance the IPO. Although Alcon attempts to portray the Bylaws Amendment as procedural, the "effect" of the purported amendment is to improperly revoke Aurion's Board's previous resolution granting the exact authority the purported amendment proscribes. *Id.* "[W]resting that function from the board through a bylaw would improperly intrude on its authority to manage the Company." *Id.*

* * *

87. The Court should accordingly declare that the Bylaws Amendment is invalid and that Aurion's bylaws prior to February 16, 2025 remain in effect.

COUNT III

(Declaratory Relief Against Defendants Alcon and Petrichor Concerning the Purchase of Petrichor Stock)

88. The allegations of the foregoing paragraphs are incorporated by reference as if set forth fully herein.

89. Alcon has agreed to purchase Aurion shares from Petrichor pursuant to a Stock Purchase Agreement, dated February 14, 2025, following which Alcon will hold shares representing more than fifty percent (50%) of the outstanding voting power of Aurion.

90. Section 3.4 of the Voting Agreement provides that "[n]o Stockholder shall be party to any Stock Sale unless all holders of Preferred Stock are allowed to participate in such transaction and the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Certificate in effect immediately prior to the Stock Sale." A "Stock Sale" is defined, as relevant here, as "a transaction or series of related transactions in which a Person, or group of related Persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company."

91. Pursuant to the Voting Agreement, Deerfield was entitled to participate in the transaction. Alcon and Petrichor failed to provide Deerfield notice of the proposed transaction in advance of the execution of the Stock Purchase

Agreement, let alone the opportunity to participate in the transaction as required by the Voting Agreement, pursuant to which Alcon would have to offer to purchase Deerfield's shares on the same terms as Alcon has agreed to purchase Petrichor's shares. Alcon and Petrichor's failure violates the Voting Agreement and its protections for Aurion's minority stockholders.

92. In addition, in connection with the Stock Purchase Agreement and any related arrangement between Alcon and Petrichor, Alcon was required to "act[] in good faith, after a reasonable investigation, to achieve a legitimate objective." *In re Sears*, 309 A.3d at 516. The Stock Purchase Agreement and any related arrangement with Petrichor is invalid because, on information and belief, it was undertaken in bad faith in furtherance of Alcon's scheme to block the proposed IPO with the illegitimate objective of owning Aurion, but without paying the price that Aurion would command in a competitive sale process. Alcon's arrangement with Petrichor was part and parcel of Alcon's scheme, which on information and belief also included the Bylaws Amendment, appointing Ms. Bankes, and securing the resignation of Mr. Frinzi. Alcon's arrangement with Petrichor, including the Stock Purchase Agreement, as part of this scheme breached Alcon's fiduciary duties to Aurion and its other stockholders.

93. The Court should accordingly declare that the Stock Purchase Agreement is invalid, and that if Alcon and Petrichor wish to pursue the transaction,

Alcon must give Aurion's preferred stockholders notice and opportunity to participate in the proposed transaction by offering to purchase Deerfield's shares on the same terms as Alcon has agreed to purchase Petrichor's shares.

PRAYER FOR RELIEF

WHEREFORE, Deerfield respectfully requests that this Court enter an Order and Judgment:

a. declaring that the appointment of Jeannette Bankes as a director of Aurion was invalid;

b. ordering that Alcon may not appoint a director to replace Ms. Bankes until both of the following have occurred: (i) Alcon's transaction with Petrichor has closed, and (ii) a replacement for the independent director removed by Alcon on February 14, 2025 has been seated;

c. declaring that the current composition of the Aurion Board is the Board as it existed prior to Ms. Bankes' purported appointment;

d. ordering the appointment of an independent director, to be proposed by Deerfield, to replace Mr. Frinzi as a director of Aurion;

e. declaring that the Bylaws Amendment is invalid;

f. declaring that Aurion's bylaws remain as they were in effect prior to the Bylaws Amendment;

g. declaring that the Stock Purchase Agreement was invalid;

h. in the alternative, declaring that Alcon must offer to purchase Deerfield's shares on the same terms as Alcon has agreed to purchase Petrichor's shares pursuant to the Stock Purchase Agreement;

i. awarding Deerfield its fees and costs, including attorneys' fees; and

j. granting such other and further relief as the Court may deem just and proper.

ROSS ARONSTAM & MORITZ LLP

/s/ David E. Ross

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February 23, 2025

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

DEERFIELD PRIVATE DESIGN FUND V, L.P. and DEERFIELD HEALTHCARE INNOVATIONS FUND II, L.P., Plaintiffs, v. ALCON RESEARCH, LLC, PETRICHOR OPPORTUNITIES FUND I LP, PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP, and JEANNETTE BANKES, Defendants, and AURION BIOTECH, INC., Nominal Defendant.	C.A. No. 2025-____-____

VERIFICATION

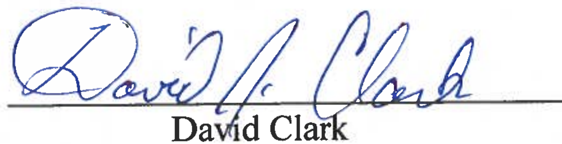
STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, David Clark, being duly sworn, depose and say as follows:

1. I am the General Counsel and authorized signatory of Plaintiffs Deerfield Private Design Fund V, L.P. and Deerfield Healthcare Innovations Fund II, L.P. (the "Deerfield Plaintiffs") and am authorized to make this verification on behalf of the Deerfield Plaintiffs.

2. I have reviewed the foregoing Verified Complaint Pursuant to 8 *Del. C.* § 225 and for Related Claims.

3. The factual statements in the Verified Complaint Pursuant to 8 *Del. C.* § 225 and for Related Claims insofar as they relate to Deerfield's acts and deeds are true, and insofar as they relate to the acts and deeds of any other person are believed by me to be true.



David Clark

SWORN TO AND SUBSCRIBED before me
this 23rd day of February 2025.

Notary Public

ARIELLE SARAH FEUERSTEIN
NOTARY PUBLIC, STATE OF NEW YORK
Registration No. 01FE0028743
Qualified in New York County
Commission Expires September 11, 2028

My Commission Expires: September 11, 2028

Exhibit A

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "AURION BIOTECH, INC.", FILED IN THIS OFFICE ON THE FIFTH DAY OF APRIL, A.D. 2022, AT 6:42 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

6292274 8100
SR# 20221314973

Authentication: 203103355
Date: 04-05-22

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

State of Delaware
Secretary of State
Division of Corporations
Delivered 03:13 PM 04/05/2022
FILED 06:42 PM 04/05/2022
SR 20221314973 - File Number 6292274

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION OF AURION BIOTECH, INC.

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

Aurion Biotech, 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 Aurion Biotech, Inc., and that this corporation was originally incorporated pursuant to the General Corporation Law on October 8, 2021 under the name "CorneaX Inc."

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 Amended and Restated Certificate of Incorporation of this corporation be amended and restated in its entirety to read as follows:

FIRST: The name of this corporation (the "**Corporation**") is Aurion Biotech, Inc.

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

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) 29,163,079 shares of Common Stock, $0.0001 par value per share ("**Common Stock**") and (ii) 23,084,142 shares of Preferred Stock, $0.0001 par value per share ("**Preferred Stock**"). Upon the filing and effectiveness (the "**Effective Time**") of this Amended and Restated Certificate of Incorporation with the Delaware Secretary of State, every 1,000 issued and outstanding shares of Common Stock shall without further action by this Corporation or the holder thereof be combined into and automatically become one share of Common Stock, and every 1,000 issued and outstanding shares of Preferred Stock shall without further action by this Corporation or the holder thereof be combined into and automatically become

one share of the applicable series of Preferred Stock. The number of authorized shares of Common Stock and Preferred Stock of the Corporation and the par value of the Common Stock and Preferred Stock shall remain as set forth in this Certificate of Incorporation, as amended. No fractional share shall be issued in connection with the foregoing combinations. All fractional shares shall be paid in cash at a price per share as determined by the Board of Directors of the Corporation. Each certificate that immediately prior to the Effective Time represented shares of Common Stock or Preferred Stock (an "**Old Certificate**") shall thereafter represent that number of shares of Common Stock or Preferred into which the shares of Common Stock or Preferred Stock, as applicable represented by the Old Certificate shall have been combined, subject to the elimination of fractional share interests as described above. The capital of the Corporation will not be reduced under or by reason of any such combinations.

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); provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation or pursuant to the General Corporation Law. There shall be no cumulative voting. The number of authorized shares of Common Stock 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.

B. PREFERRED STOCK

1,031,316 shares of the authorized and unissued Preferred Stock are hereby designated "**Series A Preferred Stock**", 2,942,333 shares are hereby designated "**Series B Preferred Stock**", 2,771,874 shares are hereby designated "**Series B-1 Preferred Stock**", 14,627,657 shares are hereby designated "**Series C Preferred Stock**" and 1,710,962 shares are hereby designated "**Series C-1 Preferred Stock**", each with the respective 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.

1. Dividends.

1.1 The Corporation shall not declare, pay or set aside any dividends on shares of any other class or series of capital stock (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 Series C Preferred Stock and Series C-1 Preferred Stock then outstanding shall first receive, or simultaneously receive a dividend on each outstanding share of Series C Preferred Stock at the rate of 8% of the Series C Original Issue Price (as defined below) per annum on each outstanding share of Series C Preferred Stock and a dividend on each outstanding share of Series C-1 Preferred Stock at the rate of 8% of the Series C-1 Original Issue Price per annum on each outstanding share of Series C-1 Preferred Stock. Such dividends shall not be cumulative and shall be payable when, as and if declared by the Board of Directors of the Corporation, prior and in preference to the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock and Common Stock. The "**Series C Original Issue Price**" shall mean $7.5200 per share and the "**Series C-1 Original Issue Price**" shall mean $6.0160 per share, in each case subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series C Preferred Stock and Series C-1 Preferred Stock.

1.2 Subject to Subsection 1.1, the Corporation shall not declare, pay or set aside any dividends on share of Series A Preferred Stock or Common Stock (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 Series B-1 Preferred Stock and the holders of the Series B Preferred Stock then outstanding shall first receive, or simultaneously receive a dividend on each outstanding share of Series B-1 Preferred Stock and on each outstanding share of Series B Preferred Stock at the rate of 8% of the Series B Original Issue Price (as defined below) per annum on each outstanding share of Series B Preferred Stock and 8% of the Series B-1 Original Issue Price (as defined below) per annum each outstanding share of Series B-1 Preferred Stock. The "**Series B Original Issue Price**" shall mean $15.8000 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock. The "**Series B-1 Original Issue Price**" shall mean $9.4000 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series B Preferred Stock.

1.3 Subject to Subsections 1.1 and 1.2 Corporation shall not declare, pay or set aside any dividends on shares of Common Stock (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 Series A Preferred Stock then outstanding shall first receive, or simultaneously receive a dividend on each outstanding share of Series A Preferred Stock at the rate of 8% of the Series A Original Issue Price (as defined below) per annum on each outstanding share of Series A Preferred Stock. Such dividends shall not be cumulative and shall be payable when, as and if declared by the Board

of Directors of the Corporation. The "**Series A Original Issue Price**" shall mean $12.3000 per share, subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Series A Preferred Stock. The term "**Original Issue Price**" shall refer to the Series A Original Issue Price when referencing the Series A Preferred Stock, the Series B Original Issue Price when referencing the Series B Preferred Stock, the Series B-1 Original Issue Price when referencing the Series B-1 Preferred Stock, the Series C Original Issue Price when referencing the Series C Preferred Stock and the Series C-1 Original Issue Price when referencing the Series C-1 Preferred Stock.

1.4 After the payment or setting aside for payment of the preferential dividends described in Subsections 1.1, 1.2 and 1.3, any additional 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) declared or paid in any calendar year shall be declared or paid among the holders of the Preferred Stock and Common Stock then outstanding, on a pari passu basis, based on the number of shares of Common Stock held by each such holder (assuming full conversion of the Preferred Stock).

1.5 In the event that the Corporation determines to distribute the proceeds (cash or otherwise) resulting from any sale or other transfer of its securities or sale, license and/or other transfer of its assets (which would not be deemed to be a Deemed Liquidation Event (as defined below)), the proceeds resulting therefrom (including in respect of any ongoing payments, such as a royalty or milestone payment) will be distributed in accordance with Section 2 (and not pursuant to Section 1).

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

2.1 Preferential Payments to Holders of Series C Preferred Stock and Series C-1 Preferred Stock. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series C Preferred Stock then outstanding and Series C-1 Preferred Stock then outstanding shall be entitled, on a pari passu basis, 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, the holders of shares of Series C Preferred Stock and Series C-1 Preferred Stock then outstanding, on a pari passu basis, 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 the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share of Series C Preferred Stock held equal to the greater of (i) the Series C Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series C Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (together with any other series of Preferred Stock that would be deemed to have converted to Common Stock pursuant to this Section 2) (the amount payable to the holders of shares of Series C Preferred Stock pursuant to this sentence is hereinafter referred to as the "**Series C Liquidation Amount**") and an amount per share of Series C-1 Preferred Stock held equal to the greater of (i) the Series C-1 Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have

been payable had all shares of Series C-1 Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (together with any other series of Preferred Stock that would be deemed to have converted to Common Stock pursuant to this Section 2) (the amount payable to the holders of shares of Series C-1 Preferred Stock pursuant to this sentence is hereinafter referred to as the "**Series C-1 Liquidation Amount**"). 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 Series C Preferred Stock and Series C-1 Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series C Preferred Stock and Series C-1 Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.2 Preferential Payments to Holders of Series B Preferred Stock. After payment in full of the Series C Liquidation Amount and Series C-1 Liquidation Amount, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series B Preferred Stock then outstanding and shares of Series B-1 Preferred Stock then outstanding, shall be entitled, on a pari passu basis, to be paid out of the assets of the Corporation available for distribution to its stockholders, and in the event of a Deemed Liquidation Event (as defined below), the holders of shares of Series B Preferred Stock and shares of Series B-1 Preferred Stock then outstanding shall be entitled, on a pari passu basis, 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 the Series A Preferred Stock or Common Stock by reason of their ownership thereof, an amount per share of Series B Preferred Stock held equal to the greater of (i) the Series B Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series B Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (together with any other series of Preferred Stock that would be deemed to have converted to Common Stock pursuant to this Section 2) (the amount payable to the holders of shares of Series B Preferred Stock pursuant to this sentence is hereinafter referred to as the "**Series B Liquidation Amount**") and an amount per share of Series B-1 Preferred Stock held equal to the greater of (i) the Series B-1 Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series B-1 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 to the holders of shares of Series B Preferred Stock pursuant to this sentence is hereinafter referred to as the "**Series B-1 Liquidation Amount**"). 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 Series B Preferred Stock and Series B-1 Preferred Stock the full amount to which they shall be entitled under this Subsection 2.1, the holders of shares of Series B Preferred Stock and Series B-1 Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares

held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.3 Preferential Payments to Holders of Series A Preferred Stock. After payment in full of the Series C Liquidation Amount, the Series C-1 Liquidation Amount, the Series B Liquidation Amount and Series B-1 Liquidation Amount, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, the holders of shares of Series A 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, the holders of shares of Series A 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 applicable, in each case before any payment shall be made to the holders of the Common Stock by reason of their ownership thereof, an amount per share equal to the greater of (i) the Series A Original Issue Price, plus any dividends declared but unpaid thereon, or (ii) such amount per share as would have been payable had all shares of Series A Preferred Stock been converted into Common Stock pursuant to Section 4 immediately prior to such liquidation, dissolution, winding up or Deemed Liquidation Event (together with any other series of Preferred Stock that would be deemed to have converted to Common Stock pursuant to this Section 2) (the amount payable to the holders of shares of Series A Preferred Stock pursuant to this sentence is hereinafter referred to as the "**Series A Liquidation Amount**"). 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 Series A Preferred Stock the full amount to which they shall be entitled under this Subsection 2.2, the holders of shares of Series A Preferred Stock shall share ratably in any distribution of the assets available for distribution in proportion to the respective amounts which would otherwise be payable in respect of the shares held by them upon such distribution if all amounts payable on or with respect to such shares were paid in full.

2.4 Payments to Holders of Common Stock. After the payment in full of the Series C Liquidation Amount, the Series C-1 Liquidation Amount, the Series B Liquidation Amount, the Series B-1 Liquidation Amount and the Series A Liquidation Amount, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation, 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 Subsections 2.1, 2.2, and 2.3 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.

2.5 Deemed Liquidation Events.

2.5.1 Definition. Each of the following events shall be considered a "**Deemed Liquidation Event**" unless the holders of at least 66.7% of the then outstanding shares of Series C Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a separate class (the "**Requisite Series C Holders**") elect otherwise by written notice sent to the Corporation at least ten (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; or

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

2.5.2 Effecting a Deemed Liquidation Event.

(a) The Corporation shall not have the power to effect a Deemed Liquidation Event referred to in Subsection 2.5.1(a)(i) unless the agreement or plan of merger or consolidation for such transaction (the "**Merger Agreement**") provides that the consideration payable to the stockholders of the Corporation in such Deemed Liquidation Event shall be paid to the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2, 2.3 and 2.4.

(b) In the event of a Deemed Liquidation Event referred to in Subsections 2.5.1(a)(ii) or 2.5.1(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 at least a majority of the then outstanding shares of Preferred Stock, acting together as a single class on an as-converted to Common Stock basis, including the Requisite Series C Holders, so request in a written instrument (the "**Redemption Request**") 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), 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 (such date being the "**Redemption Date**"), (A) to redeem all outstanding shares of Series C Preferred Stock at a price per share equal to the Series C Liquidation Amount (the "**Series C Redemption**") and all outstanding shares of Series C-1 Preferred Stock at a price per share equal to the Series C-1 Liquidation Amount (the "**Series C-1 Redemption**") on a pari passu basis before any payment shall be made to the holders of the Series B Preferred Stock, Series B-1 Preferred Stock, Series A Preferred Stock or Common Stock by reason of their ownership thereof (B) after the Series C Redemption and Series C-1 Redemption to redeem all outstanding shares of Series B Preferred Stock at a price per share equal to the Series B Liquidation Amount (the "**Series B Redemption**") and all outstanding shares of Series B-1 Preferred Stock at a price per share equal to the Series B-1 Liquidation Amount (the "**Series B-1 Redemption**") on a pari passu basis before any payment shall be made to the holders of the Series A Preferred Stock or Common Stock by reason of their ownership thereof and, (C) after the Series B Redemption and Series B-1 Redemption, to redeem all outstanding shares of Series A Preferred Stock at a price per share equal to the Series A Liquidation Amount (the "**Series A Redemption**") before any payment shall be made to the holders of the Common Stock. Notwithstanding the foregoing, in the event of a redemption pursuant to the preceding sentence, (1) if the Available Proceeds are not sufficient for the Series C Redemption and Series C-1 Redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Series C Preferred Stock and Series C-1 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, (2) if following the Series C Redemption and Series C-1 Redemption, the Available Proceeds are not sufficient for the Series B Redemption and Series B-1 Redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Series B Preferred Stock and Series B-1 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, (C) if following the Series B Redemption and Series B-1 Redemption, the Available Proceeds are not sufficient for the Series A Redemption, the Corporation shall redeem a pro rata portion of each holder's shares of Series A Preferred Stock to the fullest extent of such Available Proceeds, based on the respective amounts which would otherwise be payable in respect of the shares to be redeemed if the Available Proceeds were sufficient to redeem all such shares, and (3) shall redeem the remaining shares to have been redeemed as soon as it may lawfully do so under Delaware law governing distributions to stockholders.

(c) Redemption Notice. In the event of a redemption pursuant to Subsection 2.4.2(b) above, the Corporation shall send written notice of such redemption (the "**Redemption Notice**") to each holder of record of Preferred Stock not more than 25 days following the Corporation's receipt of the Redemption Request. Each Redemption Notice shall state:

(i) the number of shares and series of Preferred Stock held by the holder that the Corporation shall redeem on the Redemption Date specified in the Redemption Notice;

(ii) the amount payable in respect of the shares to be redeemed (the "**Redemption Price**");

(iii) the Redemption Date; and

(iv) 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.

(d) Surrender of Certificates; Payment. On or before the applicable Redemption Date, each holder of shares of Preferred Stock to be redeemed on such Redemption Date, unless such holder has exercised his, her or its right to convert such shares as provided in Section 4, shall 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 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 representing the unredeemed shares of Preferred Stock shall promptly be issued to such holder.

(e) Rights Subsequent to Redemption. 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 the certificates evidencing any of the shares of Preferred Stock so called for redemption shall not have been surrendered, dividends with respect to such shares of Preferred Stock shall cease to accrue after the Redemption Date and all rights with respect to such shares shall forthwith after such Redemption Date terminate, except only the right of the holders to receive the Redemption Price without interest upon surrender of their certificate or certificates therefor.

(f) Prior to the distribution or redemption provided for in this Subsection 2.5.2, 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.

2.5.3 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.

2.5.4 Allocation of Escrow and Contingent Consideration. In the event of a Deemed Liquidation Event pursuant to Subsection 2.5.1(a)(i), if any portion of the consideration payable to the stockholders of the Corporation is payable only upon satisfaction of contingencies (the "**Additional Consideration**"), the Merger Agreement shall provide that (a) the portion of such consideration that is not Additional Consideration (such portion, the "**Initial Consideration**") shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2, 2.3 and 2.4 as if the Initial Consideration were the only consideration payable in connection with such Deemed Liquidation Event; and (b) any Additional Consideration which becomes payable to the stockholders of the Corporation upon satisfaction of such contingencies shall be allocated among the holders of capital stock of the Corporation in accordance with Subsections 2.1, 2.2 2.3 and 2.4 after taking into account the previous payment of the Initial Consideration as part of the same transaction. For the purposes of this Subsection 2.5.4, 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 on an as-converted basis together with the holders of Common Stock as a single class.

3.2 Election of Directors. The holders of record of the shares of Series C Preferred Stock shall be entitled to elect two (2) directors of the Corporation (the "**Series C Directors**"), the holders of record of the shares of Series B Preferred Stock and Series B-1, together and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "**Series B Director**"), and the holders of record of the shares of Series A Preferred Stock, exclusively and as a separate class, shall be entitled to elect one (1) director of the Corporation (the "**Series A Director**," and together with the Series B Director and Series C Directors, the "**Preferred Directors**"), and the holders of the Preferred Stock and the holders of Common Stock, voting together as a single class on an as-converted basis, are entitled to elect the remaining directors to serve on the Board; provided, however, for administrative convenience, the initial Preferred Directors may also be appointed by the Board of Directors in connection with the approval of the initial issuance of Preferred Stock without a separate action by the holders of Preferred Stock. 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 Series C Preferred Stock, voting as a single class, Series B Preferred Stock and Series B-1 Preferred Stock, voting together as a single class, or Series A Preferred 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 Subsection 3.2, then any directorship not so filled shall remain vacant until such time as the holders of the Series C Preferred Stock , Series B Preferred Stock and Series B-1 Preferred Stock, or Series A Preferred 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. Each of the directors of the Corporation shall be entitled to cast one (1) vote on all matters submitted to a vote of the Board of Directors of the Corporation or any committee thereof. 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 Subsection 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 Subsection 3.2. The rights of the holders of the Series A Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Filing Date (as defined below) on which there are issued and outstanding less than 500,000 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 A Preferred Stock). The rights of the holders of the Series B Preferred Stock and Series B-1 Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Filing Date (as defined below) on which there are issued and outstanding less than an aggregate of 500,000 shares of Series B Preferred Stock and Series B-1 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 the Series B Preferred Stock and Series B-1 Preferred Stock). The rights of the holders of the Series C Preferred Stock and Series C-1 Preferred Stock under the first sentence of this Subsection 3.2 shall terminate on the first date following the Filing Date (as defined below) on which there are issued and outstanding less than an aggregate of 500,000 shares of Series C 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 the Series C Preferred Stock).

3.3 Junior Preferred Stock Protective Provisions. At any time when at least an aggregate of 1,500,000 shares of Series A Preferred Stock, Series B Preferred Stock, Series B-1 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 the Series A Preferred Stock, Series B Preferred Stock, Series B-1 Preferred Stock, as applicable) (together, the "**Junior Preferred Stock**") are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, amend, alter or repeal any provision of this Amended and Restated Certificate of Incorporation or Bylaws of the Corporation in a manner that materially and adversely affects the powers, preferences or rights of the Junior Preferred Stock

without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the holders of at least a majority of the then outstanding shares of Junior Preferred Stock, given in writing or by vote at a meeting, consenting or voting (as the case may be) together as a single class on an as-converted to Common Stock basis, 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, provided that the creation of any additional class or series of share capital of this Corporation (including any share capital that is either senior to, *pari passu* with or junior with respect to voting, distribution or liquidation preference to the Junior Preferred Stock) shall be deemed to not adversely affect the powers, preferences or rights of the Junior Preferred Stock.

3.4 Series C Preferred Stock Protective Provisions. At any time when at least an aggregate of 500,000 shares of Series C 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 the Series C Preferred Stock and) are outstanding, the Corporation shall not, either directly or indirectly by amendment, merger, consolidation or otherwise, do any of the following without (in addition to any other vote required by law or this Amended and Restated Certificate of Incorporation) the written consent or affirmative vote of the Requisite Series C Holders, and any such act or transaction entered into without such consent or vote shall be null and void ab initio, and of no force or effect:

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

3.4.2 create, or authorize the creation of, or issue or obligate itself to issue shares of, or instruments or agreements convertible or exchangeable into, any additional class or series of share capital of this Corporation or reclassify any capital stock with voting, distribution or liquidation preferences that are *pari passu* with or senior to the Series C Preferred Stock, or increase or decrease the number of authorized shares of Common Stock or Preferred Stock or enter into any financing when the Second Closing (as defined in the Aurion Biotech Preferred Stock Purchase Agreement dated as of April 5, 2022 (the "**Purchase Agreement**")) and/or Third Closing (as defined in the Purchase Agreement) may still occur;

3.4.3 enter into an agreement for the merger, consolidation or other combination of the Corporation with or into another entity or enter into any joint venture or partnership, enter into a sale of all or substantially all of the assets of the Corporation or effect any liquidation, dissolution or winding-up the business and affairs of the Corporation, effect any Deemed Liquidation Event, or consent to any of the foregoing;

3.4.4 declare or pay any dividend or other distribution of cash, securities, or other assets on the Junior Preferred Stock or the Common Stock;

3.4.5 purchase or redeem (or permit any subsidiary to purchase or redeem) or acquire any shares of share capital of this Corporation, other than (i) repurchases of shares from former or existing 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 a purchase price approved by the Board of Directors of the Corporation, including the approval of at least one Series C Preferred Director (including the director designated by Deerfield Private Design Fund V, L.P. and Deerfield Healthcare Innovations Fund II, L.P. ("**Deerfield**") if then serving on the Board of Directors of the Corporation) or the exercise by the Corporation of contractual rights of first refusal approved by the Board of Directors of the Corporation, including the approval of at least one Series C Preferred Director (including the director designated by Deerfield if then serving on the Board of Directors of the Corporation), or (ii) redemptions of or dividends or distributions on the Preferred Stock as expressly authorized herein;

3.4.6 create, or authorize the creation of, or issue, or authorize the issuance of any secured indebtedness or create any lien or security interest (except for purchase money liens or statutory liens of landlords, mechanics, materialmen, workmen, warehousemen and other similar persons arising or incurred in the ordinary course of business) or incur other secured indebtedness for borrowed money, including but not limited to obligations and contingent obligations under guarantees, or permit any subsidiary to take any such action with respect to any debt security lien, security interest or other indebtedness for borrowed money, in each case excess of $5,000,000, other than equipment leases, bank lines of credit or trade payables incurred in the ordinary course, unless such indebtedness has received the prior approval of the Board of Directors, including the approval of at least one Series C Preferred Director.

3.4.7 increase or decrease the authorized number of directors constituting the Board of Directors, change the number of votes entitled to be cast by any director or directors on any matter, or adopt any provision inconsistent with Article Sixth;

3.4.8 approve any sale, license or other transfer of any intellectual property, or enter into or grant any royalty streams related thereto, other than transactions entered into in the ordinary course of the Corporation's business and approved by the Board of Directors, including a majority of the Preferred Directors;

3.4.9 create, or hold capital stock in, any subsidiary that is not wholly-owned (either directly or through one or more other subsidiaries) by the Corporation, or permit any subsidiary to create, or authorize the creation of, or issue or obligate itself to issue, any shares of any class or series of capital stock, or sell, transfer or otherwise dispose of any capital stock of any direct or indirect subsidiary of the Corporation;

3.4.10 sell material assets of the Corporation and/or its subsidiaries other than in the ordinary course; or

3.4.11 enter into any transaction with an Affiliate. An "**Affiliate**" means, with respect to any specified person, any other person who, directly or indirectly, controls, is controlled by, or is under common control with such person.

The foregoing shall similarly apply to any direct or indirect subsidiary of the Corporation.

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 Preferred Stock shall be convertible, at the option of the holder thereof, at any time and from time to time (except shares of Series C Preferred Stock and Series C-1 Preferred Stock, which will not be so convertible until the earliest of: (i) immediately prior to a Deemed Liquidation Event; (ii) immediately prior to the closing of the Corporation's initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended; and (iii) from and after the Second Closing Milestone End Date (as defined in the Purchase Agreement), or if the Second Closing (as defined in the Purchase Agreement) is consummated, from and after the earlier of (x) the Third Closing (as defined in the Purchase Agreement) and (y) the Third Milestone End Date (as defined in the Purchase Agreement), 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 applicable Original Issue Price by the Applicable Conversion Price (as defined below) in effect at the time of conversion. The "**Series A Conversion Price**" shall initially be equal to $16.20. The "**Series B Conversion Price**" shall initially be equal to $22.50. Immediately following the Second Closing, the Series A Conversion Price shall be $13.30 and the Series B Conversion Price shall be $17.50. Immediately following the Third Closing, the Series A Conversion Price shall be $12.30 and the Series B Conversion Price shall be $15.80. The "**Series B-1 Conversion Price**" shall initially be equal to $9.4000. The "**Series C Conversion Price**" shall initially be equal to $7.5200, provided that if the Purchasers (as defined in the Purchase Agreement) purchase Supplemental Closing Shares (as defined in the Purchase Agreement) at any Supplemental Closing (as defined in the Purchase Agreement), the Series C Conversion Price shall be adjusted immediately after each Supplemental Closing so that the Series C Conversion Price (of all Series C Preferred Stock) shall be $7.5200 multiplied by a fraction, the numerator of which is $75,000,000 minus the aggregate amount of all Supplemental Closing Amounts (as defined in the Purchase Agreement) and the denominator of which is $75,000,000. The "**Series C-1 Conversion Price**" shall initially be equal to $6.0160, provided that if the Purchasers purchase Supplemental Closing Shares, the Series C-1 Conversion Price shall be $6.0160 multiplied by a fraction, the numerator of which is $75,000,000 minus the Supplemental Closing Amount (as defined in the Purchase Agreement) and the denominator of which is $75,000,000. The "**Applicable Conversion Price**" shall mean, as applicable, the Series A Conversion Price with respect to the Series A Preferred Stock, and the Series B Conversion Price with respect to the Series B Preferred Stock, the Series B-1 Conversion Price with respect to the Series B-1 Preferred Stock, and the Series C Conversion Price with respect to the Series C Preferred Stock, and the Series C-1 Conversion Price with respect to the Series C-1 Preferred Stock. The Applicable Conversion Price, and the rate at which shares 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; provided; that the foregoing termination of Conversion Rights shall not affect the amount(s)

otherwise paid or payable in accordance with Section 2.1, Section 2.2 and Section 2.3 to the holders of Preferred Stock pursuant to such liquidation, dissolution or winding up of the Corporation or a Deemed Liquidation Event.

4.2 Fractional Shares. No fractional shares of Common Stock shall be issued upon conversion of the 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 of the Preferred Stock in accordance with the provisions hereof and a certificate for the number (if any) of the shares of Preferred Stock represented by the surrendered certificate that were not converted into Common Stock, (ii) pay in cash such amount as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and (iii) pay in cash 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 this Amended and Restated Certificate of Incorporation. Before taking any action which would cause an adjustment reducing the Applicable Conversion Price below the then par value of the shares of Common Stock issuable upon conversion of a given series of 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 Applicable Conversion Price.

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

4.3.4 No Further Adjustment. Upon any such conversion, no adjustment to the Applicable Conversion Price 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 Applicable 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) **"Filing Date"** shall mean the date this Amended and Restated Certificate of Incorporation was filed with and accepted by the Secretary of State of the State of Delaware.

(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 all shares of Common Stock issued (or, pursuant to Subsection 4.4.3 below, deemed to be issued) by the Corporation after the Filing Date, other than (1) the following shares of Common Stock and (2) shares of Common Stock deemed issued pursuant to the following Options and Convertible Securities (clauses (1) and (2), collectively, **"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 Subsection 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, including a majority of the Preferred Directors;

(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 that were outstanding on or prior to the Filing Date, in each case provided such issuance is pursuant to the terms of such Option or Convertible Security;

(v) shares of Common Stock issued upon conversion of the Preferred Stock;

(vi) 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 a majority of the Preferred Directors;

(vii) 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 a majority of the Preferred Directors;

(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 a majority of the Preferred Directors; or

(ix) any securities issued pursuant to the Purchase Agreement (including Supplemental Closing Shares (as defined in the Purchase Agreement)).

4.4.2 No Adjustment of Applicable Conversion Price. No adjustment in the Applicable Conversion Price of 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 holders of at least a majority of the then outstanding shares of such series of Preferred Stock agreeing that no such adjustment shall be made as the result of the issuance or deemed issuance of such Additional Shares of Common 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 Filing Date shall issue any Options or Convertible Securities (excluding Options or Convertible Securities which are themselves Exempted Securities) or shall fix a record date for the determination of holders of any class of securities entitled to receive any such Options or

Convertible Securities, then the maximum number of shares of Common Stock (as set forth in the instrument relating thereto, assuming the satisfaction of any conditions to exercisability, convertibility or exchangeability but without regard to any provision contained therein for a subsequent adjustment of such number) issuable upon the exercise of such Options or, in the case of Convertible Securities and Options therefor, the conversion or exchange of such Convertible Securities, shall be deemed to be Additional Shares of Common Stock issued as of the time of such issue or, in case such a record date shall have been fixed, as of the close of business on such record date.

(b) If the terms of any Option or Convertible Security, the issuance of which resulted in an adjustment to the Applicable Conversion Price of a series of Preferred Stock pursuant to the terms of Subsection 4.4.4, are revised as a result of an amendment to such terms or any other adjustment pursuant to the provisions of such Option or Convertible Security (but excluding automatic adjustments to such terms pursuant to anti-dilution or similar provisions of such Option or Convertible Security) to provide for either (1) any increase or decrease in the number of shares of Common Stock 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 Applicable 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 Applicable Conversion Price as would have been obtained had such revised terms been in effect upon the original date of issuance of such Option or Convertible Security. Notwithstanding the foregoing, no readjustment pursuant to this clause (b) shall have the effect of increasing the Applicable Conversion Price to an amount which exceeds the lower of (i) the Applicable 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 Applicable 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 Applicable Conversion Price of a series of Preferred Stock pursuant to the terms of Subsection 4.4.4 (either because the consideration per share (determined pursuant to Subsection 4.4.5) of the Additional Shares of Common Stock subject thereto was equal to or greater than the Applicable Conversion Price then in effect, or because such Option or Convertible Security was issued before the Filing Date), are revised after the Filing 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 Subsection 4.4.3(a) shall be deemed to have been issued effective upon such increase or decrease becoming effective.

(d) Upon the expiration or termination of any unexercised Option or unconverted or unexchanged Convertible Security (or portion thereof) which resulted (either upon its original issuance or upon a revision of its terms) in an adjustment to the Applicable Conversion Price of a series of Preferred Stock pursuant to the terms of Subsection 4.4.4, the Applicable Conversion Price shall be readjusted to such Applicable Conversion Price as would have been 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 Applicable Conversion Price of a series of Preferred Stock provided for in this Subsection 4.4.3 shall be effected at the time of such issuance or amendment based on such number of shares or amount of consideration without regard to any provisions for subsequent adjustments (and any subsequent adjustments shall be treated as provided in clauses (b) and (c) of this Subsection 4.4.3). If the number of shares of Common Stock 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 Applicable Conversion Price of a series of Preferred Stock that would result under the terms of this Subsection 4.4.3 at the time of such issuance or amendment shall instead be effected at the time such number of shares and/or amount of consideration is first calculable (even if subject to subsequent adjustments), assuming for purposes of calculating such adjustment to the Applicable Conversion Price that such issuance or amendment took place at the time such calculation can first be made.

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

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

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

(a) "CP_2" shall mean the Applicable Conversion Price in effect immediately after such issuance or deemed issuance of Additional Shares of Common Stock

(b) "CP_1" shall mean the Applicable 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 for this purpose as outstanding 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 the Preferred Stock) outstanding (assuming exercise of any outstanding Options therefor) immediately prior to such issuance or deemed issuance);

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

(e) "C" shall mean the number of such Additional Shares of Common Stock issued or deemed to be issued in such transaction.

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

(a) Cash and Property: Such consideration shall:

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

(ii) insofar as it consists of property other than cash, be computed at the fair market value thereof at the time of such issue, as determined in good faith by the Board of Directors of the Corporation; 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.

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

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

(ii) the maximum number of shares of Common Stock (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.

Notwithstanding the foregoing, in connection with the issuance of any Additional Shares of Common Stock which give rise to any adjustment to the Series A Conversion Price, Series B Conversion Price and/or Series B-1 Conversion Price pursuant to this Subsection 4.4.4, in no event shall the number resulting from (i) Series A Original Issue Price divided by the Series A Conversion Price, (ii) Series B Original Issue Price divided by the Series B Conversion Price, and/or (iii) Series B-1 Original Issue Price divided by the Series B-1 Conversion Price exceed the number resulting from the Series C Original Issue Price divided the Series C Conversion Price. In no event shall the Series A Conversion Price, Series B Conversion Price and Series B-1 Conversion Price be adjusted based on the adjustment to the Series C Conversion Price and Series C-1 Conversion Price in connection with any Supplemental Closing (as defined in the Purchase Agreement).

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 Applicable Conversion Price of a series of Preferred Stock pursuant to the terms of Subsection 4.4.4, and such issuance dates occur within a period of no more than ninety (90) days from the first such issuance

to the final such issuance, then, upon the final such issuance, such Applicable Conversion Price shall be readjusted to give effect to all such issuances as if they occurred on the date of the first such issuance (and without giving effect to any additional adjustments as a result of any such subsequent issuances within such period).

4.5 Adjustment for Stock Splits and Combinations. If the Corporation shall at any time or from time to time after the Filing Date effect a subdivision of the outstanding Common Stock, the Applicable Conversion Price of each series of Preferred Stock 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 the Filing Date combine the outstanding shares of Common Stock, the Applicable Conversion Price of each series of Preferred Stock 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 Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable on the Common Stock in additional shares of Common Stock, then and in each such event the Applicable Conversion Price of each series of Preferred Stock in effect immediately before such event shall be decreased as of the time of such issuance or, in the event such a record date shall have been fixed, as of the close of business on such record date, by multiplying the Applicable 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 Applicable Conversion Price shall be recomputed accordingly as of the close of business on such record date and thereafter the Applicable Conversion Price shall be adjusted pursuant to this subsection as of the time of actual payment of such dividends or distributions; and (b) that no such adjustment shall be made if the holders of 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 as they would have received if all outstanding shares of such series of 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 Filing Date shall make or issue, or fix a record date for the determination of holders of Common Stock entitled to receive, a dividend or other distribution payable 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 Preferred Stock 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 as they would have received if all outstanding shares of 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 Subsection 2.4, if there shall occur any reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation in which the Common Stock (but not the Preferred Stock) is converted into or exchanged for securities, cash or other property (other than a transaction covered by Subsections 4.4, 4.6 or 4.7), then, following any such reorganization, recapitalization, reclassification, consolidation or merger, each share of Preferred Stock shall thereafter be convertible in lieu of the Common Stock into which it was convertible prior to such event into the kind and amount of securities, cash or other property which a holder of the number of shares of Common Stock of the Corporation issuable upon conversion of one share of the applicable series of Preferred Stock immediately prior to such reorganization, recapitalization, reclassification, consolidation or merger would have been entitled to receive pursuant to such transaction; and, in such case, appropriate adjustment (as determined in good faith by the Board 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 the 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 each Applicable Conversion Price) shall thereafter be applicable, as nearly as reasonably may be, in relation to any securities or other property thereafter deliverable upon the conversion of the Series A Preferred Stock.

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

4.10 Notice of Record Date. In the event:

(a) the Corporation shall take a record of the holders of its Common Stock (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 the Preferred Stock a notice specifying, as the case may be, (i) the record date for such dividend, distribution or right, and the amount and character of such dividend, distribution or right, or (ii) the effective date on which such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up is proposed to take place, and the time, if any is to be fixed, as of which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon the conversion of the Preferred Stock) shall be entitled to exchange their shares of Common Stock (or such other capital stock or securities) for securities or other property deliverable upon such reorganization, reclassification, consolidation, merger, transfer, dissolution, liquidation or winding-up, and the amount per share and character of such exchange applicable to the Preferred Stock 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 of at least $15.0400 per share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Common Stock in a firm-commitment underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, resulting in at least $90,000,000 of gross proceeds, net of the underwriting discount and commissions, to the Corporation, and in connection with such offering the Common Stock is listed for trading on the Nasdaq Stock Market's National Market, the New York Stock Exchange or another exchange or marketplace approved by the Board of Directors of the Corporation, including a majority of the Preferred Directors (a "**Qualified IPO**") or (b) the date and time, or the occurrence of an event, specified by vote or written consent of the holders of the Requisite Series C Approval (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 Subsection 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 by his, her or its attorney duly authorized in writing. All rights with respect to the Preferred Stock converted pursuant to Subsection 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 of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.2. As soon as practicable after the Mandatory Conversion Time and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for the 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 and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment in cash of any declared but unpaid dividends on the shares of such Preferred Stock converted. The value of the Common Stock for the purposes of the subsection (2) of the immediately prior sentence shall be the price per share set forth in the final prospectus (or the weighted average price if there is more than one price per share in the final prospectus) if the payment is in connection with an initial public offering, otherwise it shall be the fair market value at the time of such payment as determined in good faith by the Board of Directors of the Corporation. 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.

5.3 Mandatory Conversion upon Failure to Fund. Upon the failure of a holder of Series C Preferred Stock to fund its obligations at the Supplemental Closing (as defined in the Purchase Agreement), Second Closing or Third Closing (such holder, a "**Defaulting Holder**"), all outstanding shares of Series C Preferred Stock held by the Defaulting Holder shall immediately and automatically be converted into shares of Common Stock, at the effective conversion rate of one (1) share of Common Stock for each ten (10) shares of Series C Preferred thus converted (the "**Defaulting Holder Conversion Time**"). Each Defaulting Holder holding shares of Series C 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 by his, her or its

attorney duly authorized in writing. All rights with respect to the Series C Preferred Stock converted pursuant to Subsection 5.3, including the rights, if any, to receive notices and vote (other than as a holder of Common Stock), will terminate at the Defaulting Holder Conversion Time (notwithstanding the failure of the holder or holders thereof to surrender any certificates at or prior to such time), except only the rights of the holders thereof, upon surrender of any certificate or certificates of such holders (or lost certificate affidavit and agreement) therefor, to receive the items provided for in the next sentence of this Subsection 5.3. As soon as practicable after the Defaulting Holder Conversion Time and, if applicable, the surrender of the certificate or certificates (or lost certificate affidavit and agreement) for the Series C 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 and (b) pay cash as provided in Subsection 4.2 in lieu of any fraction of a share of Common Stock otherwise issuable upon such conversion and the payment in cash of any declared but unpaid dividends on the shares of such Series C Preferred Stock converted. The value of the Common Stock for the purposes of the subsection (2) of the immediately prior sentence shall be the fair market value at the time of such payment as determined in good faith by the Board of Directors of the Corporation. Such converted Series C 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 Series C Preferred Stock accordingly.

6. Redemption. The Preferred Stock is not redeemable, provided, however, that this section shall not be construed to prevent the operation of Subsection 2.4.2(b) hereof.

7. 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 or acquisition.

8. Waiver. Any of the rights, powers, preferences and other terms of the Series C Preferred Stock set forth herein may be waived on behalf of all holders of Series C Preferred Stock by the affirmative written consent or vote of the holders of the Requisite Series C Approval. Any of the rights, powers, preferences and other terms of the Series B Preferred Stock or Series B-1 Preferred Stock set forth herein may be waived on behalf of all holders of Series B Preferred Stock and Series B-1 Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series B Preferred Stock and Series B-1 Preferred Stock then outstanding voting together as a separate class. Any of the rights, powers, preferences and other terms of the Series A Preferred Stock set forth herein may be waived on behalf of all holders of Series A Preferred Stock by the affirmative written consent or vote of the holders of at least a majority of the shares of Series A Preferred Stock then outstanding voting together as a separate class.

9. 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 of the Corporation 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 of the Corporation 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.

TWELFTH: To the extent one or more sections of any other state corporations code setting forth minimum requirements for the corporation's retained earnings and/or net assets are applicable to the Corporation's repurchase of shares of Common Stock, such code sections shall not apply, to the greatest extent permitted by applicable law, in whole or in part with respect to repurchases by the Corporation of its Common Stock from employees, officers, directors, advisors, consultants or other persons performing services for the Corporation or any subsidiary pursuant to agreements under which the Corporation has the right to repurchase such shares at cost upon the occurrence of certain events, such as the termination of employment. In the case of any such repurchases, distributions by the corporation may be made without regard to the "preferential dividends arrears amount" or any "preferential rights amount," as such terms may be defined in such other state's corporations code.

* * *

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 Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 228, 242 and 245 of the General Corporation Law.

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IN WITNESS WHEREOF, this Amended and Restated Certificate of Incorporation has been duly executed by a duly authorized officer of this corporation on this 5th day of April, 2022.

DocuSigned by:

By: David Rostov

David Rostov, Chief Financial Officer

Exhibit B

AURION BIOTECH, INC.

ACTION BY WRITTEN CONSENT OF

PETRICHOR OPPORTUNITIES FUND I LP

AND

THE MAJORITY HOLDERS OF SERIES B AND SERIES B-1 PREFERRED STOCK

Pursuant to Section 228(a) of the General Corporation Law of the State of Delaware (the "**DGCL**"), the bylaws of Aurion Biotech, Inc., a Delaware corporation (the "**Company**"), (i) Petrichor Opportunities Fund I LP ("**Petrichor I**") and (ii) the undersigned stockholders, constituting a majority of the holders of the outstanding shares of Series B Preferred Stock and Series B-1 Preferred Stock (each as defined in the Company's Amended and Restated Certificate of Incorporation, as amended (the "**Certificate of Incorporation**")) voting together as a separate class, hereby take the following actions by written consent effective as of the Consent Effective Time (defined below) without a formal meeting and without prior notice.

Removal and Appointment of the Series B Director

WHEREAS: Pursuant to Article Fourth, Part B, Section 3.2 of the Certification of Incorporation, the holders of record of the shares of Series B Preferred Stock and Series B-1 Preferred Stock are entitled to elect one (1) director of the Company (the "**Series B Director**");

WHEREAS: Any director elected pursuant to Article Fourth, Part B, Section 3.2 of the Certification of Incorporation 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 holders or pursuant to a written consent of such holders;

WHEREAS: Pursuant to Section 1.4 of the Amended and Restated Voting Agreement, dated December 13, 2022, by and among the Company and the stockholders identified therein (the "**Voting Agreement**"), each Stockholder (as defined in the Voting Agreement) agrees to vote or cause to be voted all Shares (as defined in the Voting Agreement) owned by such Stockholder, or over which such Stockholder has voting control, in whatever manner as shall be necessary to ensure that a director elected pursuant to Section 1.2 of the Voting Agreement be removed once directed or approved by the affirmative vote of the person entitled to designate that director;

WHEREAS: Pursuant to Section 1.2(b) of the Voting Agreement, Petrichor I is entitled to designate one (1) Series B Director and previously designated Patrick Lally to serve as the Series B Director;

WHEREAS: Pursuant to Section 1.2(b) of the Voting Agreement, each Stockholder agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that one (1) individual designated by Petrichor I shall be elected to the Company's board of directors as a Series B Director;

WHEREAS: Petrichor I desires to remove Patrick Lally as the Series B Director, effective as of the Consent Effective Time; and

WHEREAS: Petrichor I desires to designate Jeanette Bankes to serve as the Series B Director and fill the vacancy created by such removal, effective immediately after the removal of Patrick Lally as the Series B Director at the Consent Effective Time.

NOW THEREFORE, BE IT:

RESOLVED: That the undersigned stockholders, constituting a majority of the holders of Series B Preferred Stock and Series B-1 Preferred Stock, hereby remove Patrick Lally as the Series B Director of the Company, effective as of the Consent Effective Time.

RESOLVED: That the undersigned stockholders hereby elect Jeanette Bankes to serve as a director of the Company as the Series B Director and fill the vacancy created by such removal, effective immediately after the removal of Patrick Lally as the Series B Director at the Consent Effective Time, to serve until such time as his successor is duly elected and qualified or until his earlier death, resignation or removal in each case in accordance with the Certificate of Incorporation and Voting Agreement.

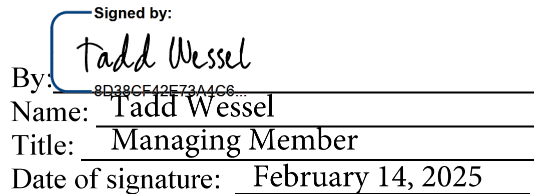
Omnibus Resolutions

RESOLVED FURTHER, that pursuant to Section 228(c) of the DGCL, each of the undersigned provides that this written consent will be effective (the "**Consent Effective Time**") at such time as the undersigned executes and delivers this consent to the Company, provided that the Consent Effective Time occurs no later than 60 days after the last date of signature of this written consent.

(*signature page follows*)

This action by written consent shall be effective as of the Consent Effective Time. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's Series B Preferred Stock and/or Series B-1 Preferred Stock held by such stockholder in favor of the above resolutions, and Petrichor Opportunities Fund I LP is exercising its right under Section 1 of the Voting Agreement to direct the removal and designation of the Series B Director as set forth in the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Execution and delivery of this consent by electronic transmission in facsimile or PDF format shall constitute due execution and delivery for all purposes. A copy, facsimile, PDF or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

PETRICHOR OPPORTUNITIES FUND I LP
By: Petrichor Opportunities Fund I GP LLC, its General Partner



By: ______________________
Name: Tadd Wessel
Title: Managing Member
Date of signature: February 14, 2025

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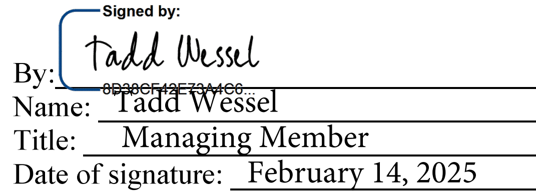
This action by written consent shall be effective as of the Consent Effective Time. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's Series B Preferred Stock and/or Series B-1 Preferred Stock held by such stockholder in favor of the above resolutions, and Petrichor Opportunities Fund I LP is exercising its right under Section 1 of the Voting Agreement to direct the removal and designation of the Series B Director as set forth in the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Execution and delivery of this consent by electronic transmission in facsimile or PDF format shall constitute due execution and delivery for all purposes. A copy, facsimile, PDF or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP
By: Petrichor Opportunities Fund I GP LLC, its General Partner

By: 

Name: Tadd Wessel
Title: Managing Member
Date of signature: February 14, 2025

This action by written consent shall be effective as of the Consent Effective Time. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's Series B Preferred Stock and/or Series B-1 Preferred Stock held by such stockholder in favor of the above resolutions, and Petrichor Opportunities Fund I LP is exercising its right under Section 1 of the Voting Agreement to direct the removal and designation of the Series B Director as set forth in the above resolutions. This action by written consent may be executed in any number of counterparts, each of which shall constitute an original and all of which together shall constitute one action. Execution and delivery of this consent by electronic transmission in facsimile or PDF format shall constitute due execution and delivery for all purposes. A copy, facsimile, PDF or other reliable reproduction of this action by written consent may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

ALCON RESEARCH, LLC

By:__________________________
Name: Tom Hudnall
Title: VP, Legal Counsel
Date of signature: February 14, 2025

Exhibit C

**WRITTEN CONSENT OF
STOCKHOLDERS OF
AURION BIOTECH, INC.**

Pursuant to Section 228 of the Delaware General Corporation Law, the undersigned stockholders of Aurion Biotech, Inc. (the "**Company**") hereby take the following action by written consent:

Whereas, Alcon Research, LLC is the record owner of greater than 40% of the voting power of the outstanding capital stock of the Company;

Whereas, Petrichor Opportunities Fund I LP and Petrichor Opportunities Fund I Intermediate LP, collectively, is the record owner of approximately 15% of the voting power of the outstanding capital stock of the Company;

Whereas, on February 14, 2025, Mr. Thomas G. Frinzi resigned as a member and executive chairman of the Board, and, as a result, there are currently six directors serving on the Board, which could cause a deadlock on certain board votes; and

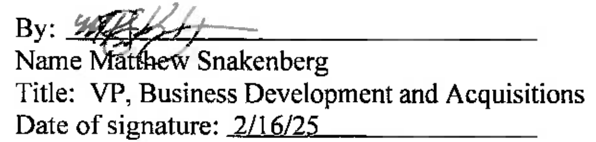
Whereas, to (i) ensure that all directors have an adequate opportunity to consider, deliberate on and approve acts and transactions that the undersigned stockholders believe would be material to the Company, and (ii) protect the undersigned stockholders' rights as owners of a majority of the voting power of the outstanding capital stock of the Company, the undersigned stockholders have determined it is necessary and advisable to amend and restate the Amended and Restated Bylaws of the Company.

Now, therefore, be it resolved, that the Amended and Restated Bylaws of the Company are hereby amended and restated, in their entirety, in the manner attached hereto and incorporated herein by reference (with deletions shown in strike-through text and additions shown in underlined text).

(Signature Page Follows)

In witness whereof, this written consent, which may be executed in counterparts, shall be effective immediately and shall be irrevocable. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

ALCON RESEARCH, LLC

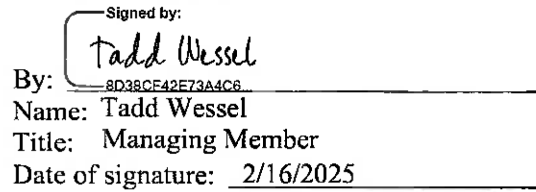


By: ______________________
Name Matthew Snakenberg
Title: VP, Business Development and Acquisitions
Date of signature: 2/16/25

In witness whereof, this written consent, which may be executed in counterparts, shall be effective immediately and shall be irrevocable. By executing this action by written consent, each undersigned stockholder is giving written consent with respect to all shares of the Company's capital stock held by such stockholder in favor of the above resolutions. This action by written consent shall be filed with the minutes of the proceedings of the stockholders of the Company.

PETRICHOR OPPORTUNITIES FUND I LP

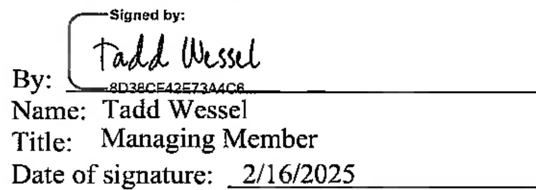
By: Petrichor Opportunities Fund I GP LLC
Its: General Partner



By: ______________________
Name: Tadd Wessel
Title: Managing Member
Date of signature: 2/16/2025

PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP

By: Petrichor Opportunities Fund I GP LLC
Its: General Partner



By: ______________________
Name: Tadd Wessel
Title: Managing Member
Date of signature: 2/16/2025

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ATTACHMENT
Form of Amended and Restated Bylaws

AMENDED AND RESTATED

BYLAWS OF

AURION BIOTECH, INC.

~~**Adopted March 31, 2022**~~

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ARTICLE I — MEETINGS OF STOCKHOLDERS

1.1 Place of Meetings. Meetings of stockholders of Aurion Biotech, Inc. (the "**Company**") shall be held at any place, within or outside the State of Delaware, determined by the Company's board of directors (the "**Board**"). The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the Delaware General Corporation Law (the "**DGCL**"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Company's principal executive office. The Board may cancel, postpone, or reschedule any previously scheduled meeting of stockholders at any time, before or after the notice for such meeting has been given to the stockholders.

1.2 Annual Meeting. Unless directors are elected by written consent in lieu of an annual meeting as permitted by Section 211(b) of the DGCL, an annual meeting of stockholders shall be held for the election of directors at such date and time as may be designated by resolution of the Board from time to time. Stockholders may, unless the certificate of incorporation otherwise provides, act by written consent to elect directors; *provided, however,* that, if such consent is less than unanimous, such action by written consent may be in lieu of holding an annual meeting only if all of the directorships to which directors could be elected at an annual meeting held at the effective time of such action are vacant and are filled by such action. Any other proper business may be transacted at the annual meeting.

1.3 Special Meeting. A special meeting of the stockholders may be called at any time by the Board, Chairperson of the Board, Chief Executive Officer or President (in the absence of a Chief Executive Officer).

If a special meeting of the stockholders has been called, the Company shall cause notice to be given to the stockholders entitled to vote at such meeting, in accordance with these bylaws, that a meeting will be held at the time requested by the person or persons calling the meeting. No business may be transacted at such special meeting other than the business specified in such notice to stockholders. Nothing contained in this paragraph of this **section 1.3** shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held or the business that may be transacted at such meeting.

1.4 Notice of Stockholders' Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a notice of the meeting in the form of a writing or electronic transmission (as defined in **section 7.1** of these bylaws) shall be given which shall state the place, if any, date and hour of the meeting, 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 meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Except as otherwise provided in the DGCL, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting.

1.5 Quorum. Except as otherwise provided by law, the certificate of incorporation or these bylaws, at each meeting of stockholders the presence in person or by proxy of the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote at the meeting shall be necessary and sufficient to constitute a quorum. Where a separate vote by a class or series or classes or series is required, a majority of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter, except as otherwise provided by law, the certificate of incorporation or these bylaws.

If, however, such quorum is not present or represented at any meeting of the stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have the power to adjourn the meeting from time to time, in the manner provided in **section 1.6** of these bylaws, until a quorum is present or represented.

1.6 Adjourned Meeting; Notice. Any meeting of stockholders, annual or special, may adjourn from time to time to reconvene at the same or some other place, and notice need not be given of the adjourned meeting if the time, 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. At the adjourned meeting, the Company may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and **section 1.10** of these bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

1.7 Conduct of Business. The chairperson of any meeting of stockholders shall be designated by the Board; in the absence of such designation, the Chairperson of the Board, if any, or the Chief Executive Officer (in the absence of the Chairperson of the Board) or the President (in the absence of the Chairperson of the Board and the Chief Executive Officer), or in their absence any other executive officer of the Company, shall serve as chairperson of the stockholder meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting. The chairperson of any meeting of stockholders shall determine the order of business and the procedure at the meeting, including such regulation of the manner of voting and the conduct of business, and shall have the power to adjourn the meeting to another place, if any, date or time, whether or not a quorum is present.

1.8 Voting. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of **section 1.10** of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of capital stock held by such stockholder as of the applicable record date which has voting power upon the matter in question. Voting at meetings of stockholders need not be by written ballot and, unless otherwise required by law, need not be conducted by inspectors of election unless so determined by the holders of shares of stock having a majority of the votes which could be cast by the holders of all outstanding shares of stock entitled to vote thereon which are present in person or by proxy at such meeting. If authorized by the Board, such requirement of a written ballot shall be satisfied by a ballot submitted by electronic transmission, *provided* that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or proxy holder.

Except as otherwise required by law, the certificate of incorporation or these bylaws, in all matters other than the election of directors, the affirmative vote of a majority of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Except as otherwise required by law, the certificate of incorporation or these bylaws, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Where a separate vote by a class or series or classes or series is required, in all matters other than the election of directors, the affirmative vote of the majority of the voting power of the outstanding shares of such class

or series or classes or series present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law, the certificate of incorporation or these bylaws.

1.9 Stockholder Action by Consent Without a Meeting. Unless otherwise provided in the certificate of incorporation, any action required by the DGCL to be taken at any annual or special meeting of stockholders of a corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum 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.

A consent must be set forth in writing or in an electronic transmission. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders to take action are delivered to the Company in the manner required by Section 228 of the DGCL within 60 days of the first date on which a consent is so delivered to the Company. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Company. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective. All references to a consent in this **section 1.9** mean a consent permitted by this **section 1.9**.

A consent permitted by this **section 1.9** shall be delivered (i) to the principal place of business of the Company; (ii) to an officer or agent of the Company having custody of the book in which proceedings of meetings of stockholders are recorded; (iii) to the registered office of the Company in the State of Delaware by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with Section 116 of the DGCL to an information processing system, if any, designated by the Company for receiving such consents. In the case of delivery pursuant to the foregoing clause (iv), such consent must set forth or be delivered with information that enables the Company to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder as proxy, such consent must comply with the applicable provisions of Section 212(c)(2) and (3) of the DGCL. A consent may be documented and signed in accordance with Section 116 of the DGCL, and when so documented or signed shall be deemed to be in writing for purposes of the DGCL; *provided* that if such consent is delivered pursuant to clause (i), (ii) or (iii) of the first sentence of this paragraph, such consent must be reproduced and delivered in paper form.

In the event that the Board shall have instructed the officers of the Company to solicit the vote or consent of the stockholders of the Company, an electronic transmission of a stockholder consent given pursuant to such solicitation, to be effective, must be delivered by electronic mail (as defined in **section 7.1** of these bylaws) or facsimile telecommunications to the Secretary or the President of the Company or to a person designated by the Company for receiving such consent, or delivered to an information processing system designated by the Company for receiving such consent.

Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented 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 notice of such meeting had been the date that consents signed by a sufficient number of holders to take the action were delivered to the Company as provided in Section 228 of the DGCL. In the event that the action which is consented to is such as would have required the filing of a certificate under any provision of the DGCL, if such action had been voted on by stockholders at a meeting thereof, the certificate filed under such provision shall state, in lieu of any statement required by such provision concerning any vote of stockholders, that consent has been given in accordance with Section 228 of the DGCL.

1.10 Record Dates. In order that the Company 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 not be more than 60 nor less than 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 and 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 with the provisions of Section 213 of the DGCL and this **section 1.10** at the adjourned meeting.

In order that the Company may determine the stockholders entitled to consent to corporate action without a meeting in accordance with Section 228 of the DGCL, 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 date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Company in accordance with Section 228(d) of the DGCL. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Company may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders 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 be not more than 60 days prior to such action. If no 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.

1.11 Proxies. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting, or such stockholder's authorized officer, director, employee or agent, may authorize another person or persons to act for such stockholder by proxy authorized by a document or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. The authorization of a person to act as a proxy may be documented, signed and delivered in accordance with Section 116 of the DGCL, *provided* that such authorization shall set forth, or be delivered with information enabling the Company to determine, the identity of the stockholder granting such authorization. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL.

1.12 List of Stockholders Entitled to Vote. The Company shall prepare, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; *provided, however,* if the record date for determining the stockholders entitled to vote is less than 10 days

before the meeting date, 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. The Company shall not be required to include electronic mail addresses or other electronic contact information on such list. 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 days prior to the meeting: (i) on a reasonably accessible electronic network, *provided* that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the Company's principal place of business. In the event that the Company determines to make the list available on an electronic network, the Company may take reasonable steps to ensure that such information is available only to stockholders of the Company. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also 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 such list shall be provided with the notice of the meeting.

ARTICLE II — DIRECTORS

2.1 Powers. The business and affairs of the Company shall be managed by or under the direction of the Board, except as may be otherwise provided in the DGCL or the certificate of incorporation.

2.2 Number of Directors. The Board shall consist of one or more members, each of whom shall be a natural person. ~~Unless~~ Subject to **section 2.13** of these bylaws, unless the certificate of incorporation fixes the number of directors, the number of directors shall be determined from time to time by resolution of the Board. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

2.3 Election, Qualification and Term of Office of Directors. Except as provided in **section 2.4** of these bylaws, and subject to **sections 1.2** and **1.9** of these bylaws, directors shall be elected at each annual meeting of stockholders. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The certificate of incorporation or these bylaws may prescribe other qualifications for directors. Each director shall hold office until such director's successor is elected and qualified or until such director's earlier death, resignation or removal.

2.4 Resignation and Vacancies. Any director may resign at any time upon notice given in writing or by electronic transmission to the Company. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. A resignation which is conditioned upon the director failing to receive a specified vote for reelection as a director may provide that it is irrevocable. Unless otherwise provided in the certificate of incorporation or these bylaws, when one or more directors resign from the Board, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective.

Unless otherwise provided in the certificate of incorporation or these bylaws:

(i) Vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director.

(ii) Whenever the holders of any class or classes of stock or series thereof are entitled to elect one or more directors by the provisions of the certificate of incorporation, vacancies and

newly created directorships of such class or classes or series may be filled by a majority of the directors elected by such class or classes or series thereof then in office, or by a sole remaining director so elected.

If at any time, by reason of death or resignation or other cause, the Company should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the voting stock at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of the DGCL as far as applicable.

A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office and until such director's successor is elected and qualified, or until such director's earlier death, resignation or removal.

2.5 Place of Meetings; Meetings by Telephone. The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board or any subcommittee, may participate in a meeting of the Board, or any such committee or subcommittee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

2.6 Conduct of Business. Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in his or her absence by the Vice Chairperson of the Board, if any, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary shall act as secretary of the meeting, but in his or her absence the chairperson of the meeting may appoint any person to act as secretary of the meeting.

2.7 ~~Regular~~ Meetings. Regular meetings of the Board may be held ~~without notice~~ at such time and at such place as shall from time to time be determined by the Board.
~~2.8 Special Meetings; Notice.~~ Special meetings of the Board for any purpose or purposes may be called at any time by the Chairperson of the Board, the Chief Executive Officer, the President, the Secretary or any two directors.

2.8 Notice.

Notice of ~~the time and place of special meetings~~each meeting of the Board shall be:

(i) delivered personally by hand~~,~~ or by courier ~~or by telephone~~;

(ii) sent by United States first-class mail, postage prepaid; or

(iii) given by electronic transmission,

directed to each director at that director's address or ~~telephone number, or~~ by means of electronic transmission, as the case may be, as shown on the Company's records.

~~If the notice is delivered personally by hand, by courier, or by telephone, or given by means of~~

~~electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Company's principal executive office) nor the purpose of the meeting, to the fullest extent permitted by applicable law.~~

Such notice shall be given to each director at least 3 business days before the date the meeting is to be held and shall set forth the date, time and place (if any) of such meeting and a description of the business to be transacted thereat (including the text of any proposed resolution or bylaw amendment, if applicable); provided, that if any special meeting is called by or at the request of a majority of the directors then in office, such notice may be given to each director by electronic mail not less than 24 hours before the time the meeting is to be held.

2.9 Quorum; Voting. At all meetings of the Board, the presence of at least a majority of the directors in office from time to time shall constitute a quorum for the transaction of business; *provided* that in no case shall the presence of less than 1/3 of the total authorized directorships constitute a quorum. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

The affirmative vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws.

If the certificate of incorporation provides that one or more directors shall have more or less than one vote per director on any matter, every reference in these bylaws to a majority or other proportion of the directors shall refer to a majority or other proportion of the votes of the directors.

2.10 Board Action by Consent Without a Meeting. Unless otherwise restricted by the certificate of incorporation or these bylaws, (i) any action required or permitted to be taken at any meeting of the Board, or of any committee or subcommittee thereof, may be taken without a meeting if all members of the Board or committee or subcommittee, as the case may be, consent thereto in writing or by electronic transmission; and (ii) a consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this **section 2.10** at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board, or the committee or subcommittee thereof, in the same paper or electronic form as the minutes are maintained.

2.11 Fees and Compensation of Directors. Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

2.12 Removal of Directors. Unless otherwise restricted by statute, the certificate of incorporation or these bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the voting power of the class or classes of stock or series thereof then entitled to vote to elect such directors.

No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

2.13 Approval of Material Actions. Notwithstanding anything in these bylaws to the contrary, and to the fullest extent not prohibited by applicable law or any provision of the certificate of

incorporation, the Board shall not take (or permit any direct or indirect subsidiary of the Company to take) any of the following actions (or resolve to take or enter into an agreement to take such actions), and shall not delegate to any officer, employee or agent of the Company, or any other person or body, the authority to take any such actions (or enter into an agreement to take such actions), without the approval of a majority of the directors then in office at a duly noticed meeting:

(i) authorize, issue, sell or otherwise dispose of any shares of capital stock of the Company (or any subsidiary thereof) or securities of the Company (or any subsidiary thereof) that are directly or indirectly convertible into or exercisable or exchangeable for (in each case, whether immediately or following the passage of time or happening of events) shares of capital stock of the Company (or any subsidiary thereof), including, without limitation, pursuant to a "poison pill" stockholder rights plan, other than shares of common stock of the Company issuable upon (a) the conversion, exercise or settlement of options or rights to purchase or acquire shares of common stock granted to an employee or director of, or consultant or advisor to, the Company (or any subsidiary thereof) pursuant to a plan, agreement or arrangement approved by the Board that were outstanding as of the Effective Time (as defined below) or (b) the conversion of any shares of preferred stock of the Company, pursuant to the terms thereof, that were outstanding as of the Effective Time; provided that, for purposes of this clause (i), the issuance, sale or other disposition of any security of any entity that is convertible into or exercisable or exchangeable for (in each case, whether immediately or following the passage of time or happening of events) shares of capital stock of the Company (or any subsidiary thereof) shall be deemed an issuance of shares of capital stock of the Company (or any subsidiary thereof) that may be acquired upon such conversion, exercise or exchange;

(ii) authorize, issue, sell or otherwise dispose of any derivative interest in the Company's equity securities, including without limitation any option, warrant, convertible security, stock appreciation right, cash-settled equity swap, total return swap, synthetic equity position or similar derivative arrangement or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Company or with a value derived in whole or in part from the value of any class or series of shares of the Company, whether settled in cash or stock or other property or securities;

(iii) sell, lease, exchange, license, sell and leaseback, abandon, mortgage or otherwise encumber or subject to any pledge, claim, lien, charge, option, right of first refusal, encumbrance or security interest of any kind or nature whatsoever, or otherwise dispose in whole or in part of any properties, assets or rights or any interest therein;

(iv) approve any sale, license or other transfer of any intellectual property, or enter into or grant any royalty streams related thereto;

(v) adopt or enter into a plan of complete or partial liquidation, dissolution, restructuring, recapitalization or other reorganization;

(vi) create, or authorize the creation of, or issue, or authorize the issuance of any secured indebtedness or create any lien or security interest or incur other secured indebtedness for borrowed money, including but not limited to obligations and contingent obligations under guarantees, or permit any subsidiary to take any such action with respect to any debt security lien, security interest or other indebtedness for borrowed money;

(vii) create, or permit the Company to hold capital stock in, any subsidiary that is not wholly-owned (either directly or through one or more other subsidiaries) by the Company;

(viii) declare any dividend on the shares of capital stock of the Company;

(ix) purchase, redeem or acquire (or permit any subsidiary to purchase, redeem or acquire) any shares of capital stock of the Company, other than redemptions of shares of preferred stock of the Company expressly authorized by the certificate of incorporation;

(x) amend, alter or repeal the certificate of incorporation or bylaws of the Company;

(xi) enter into any contract with one or more current or prospective stockholders (or one or more beneficial owners of stock), in its or their capacity as such;

(xii) form or designate any committee of the Board, expand or modify the power and authority of any committee of the Board, remove a director as a member of any committee of the Board, appoint a director to serve as a member or alternate member of any committee of the Board, or authorize any committee to create a subcommittee thereof or expand or modify the power and authority of any such subcommittee;

(xiii) authorize any officer to exercise any power or authority not expressly delegated thereto pursuant to these bylaws;

(xiv) amend, modify or waive, or consent to any amendment, modification or waiver of, any term or provision of any security that is directly or indirectly convertible into or exercisable or exchangeable for (in each case, whether immediately or following the passage of time or happening of events) shares of capital stock of the Company;

(xv) increase or decrease the authorized number of directorships;

(xvi) approve the entry into any joint venture distribution, commercialization or similar agreement or partnership with any other person or entity;

(xvii) approve any resolution providing for, or any agreement or plan of, merger or consolidation to which the Company would be a constituent entity or a party; or

(xviii) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval.

ARTICLE III — COMMITTEES

3.1 Committees of Directors. ~~The~~Subject to **section 2.13** of these bylaws, the Board may designate one or more committees, each committee to consist of one or more of the directors of the Company. 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 a committee, the member or members thereof present at any meeting and 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 the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Company, and may authorize the seal of the Company to be affixed to all papers that may require it; but no such committee shall have the power or authority to (i) approve or adopt, or recommend to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopt, amend or repeal any bylaw of the Company.

3.2 Committee Minutes. Each committee and subcommittee shall keep regular minutes of its meetings.

3.3 Meetings and Actions of Committees. A majority of the directors then serving on a committee or subcommittee shall constitute a quorum for the transaction of business by the committee or subcommittee, unless the certificate of incorporation, these bylaws, a resolution of the Board or a resolution of a committee that created the subcommittee requires a greater or lesser number, *provided* that in no case shall a quorum be less than 1/3 of the directors then serving on the committee or subcommittee. The vote of the majority of the members of a committee or subcommittee present at a meeting at which a quorum is present shall be the act of the committee or subcommittee, unless the certificate of incorporation, these bylaws, a resolution of the Board or a resolution of a committee that

created the subcommittee requires a greater number. Meetings and actions of committees and subcommittees shall otherwise be governed by, and held and taken in accordance with, the provisions of:

(i) **section 2.5** (Place of Meetings; Meetings by Telephone);

(ii) **section 2.7** (~~Regular~~ Meetings);

(iii) **section 2.8** (~~Special Meetings;~~ Notice);

(iv) **section 2.9** (Quorum; Voting);

(v) **section 2.10** (Board Action by Consent Without a Meeting); and

(vi) **section 7.4** (Waiver of Notice)

with such changes in the context of those bylaws as are necessary to substitute the committee or subcommittee and its members for the Board and its members~~. *However*:~~; provided that notice of each committee meeting shall be given to each member, and if given personally by hand, by courier, or by telephone, or given by means of electronic transmission, it shall be delivered, sent or otherwise directed to each director, as applicable, at least 24 hours before the time of the holding of the meeting, or if given by mail, it shall be deposited in the United States mail at least four days before the time of the holding of the meeting; provided further, that:

(i) the time and place of regular meetings of committees or subcommittees may be determined either by resolution of the Board or by resolution of the committee or subcommittee;

(ii) special meetings of committees or subcommittees may also be called by resolution of the Board or the committee or subcommittee; and

(iii) notice of special meetings of committees and subcommittees shall also be given to all alternate members, as applicable, who shall have the right to attend all meetings of the committee or subcommittee. The Board, or, in the absence of any such action by the Board, the committee or subcommittee, may adopt rules for the government of any committee or subcommittee not inconsistent with the provisions of these bylaws.

Any provision in the certificate of incorporation providing that one or more directors shall have more or less than one vote per director on any matter shall apply to voting in any committee or subcommittee, unless otherwise provided in the certificate of incorporation or these bylaws.

3.4 Subcommittees. ~~Unless otherwise provided in the certificate of incorporation, these bylaws or~~If, and only if, authorized in the resolutions of the Board adopted pursuant to **section 2.13** or by the provision of these bylaws, in either case, designating ~~the~~such committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and delegate to a subcommittee any or all of the powers and authority of the committee.

3.5 Existing Committees. Any committee of the Board and any subcommittee in existence at the time of the effectiveness of the amended and restated bylaws of the Company first inserting this **section 3.5** (the "Effective Time") shall cease to exist and any and all power and authority granted to any such committee or subcommittee shall be withdrawn and rescinded as of the Effective Time.

ARTICLE IV — OFFICERS

4.1 Officers. The officers of the Company shall be a President and a Secretary. The Company may also have, at the discretion of the Board, a Chairperson of the Board, a Vice Chairperson of the Board, a Chief Executive Officer, one or more Vice Presidents, a Chief Financial Officer, a Treasurer, one or more Assistant Treasurers, one or more Assistant Secretaries and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

4.2 Appointment of Officers. The Board shall appoint the officers of the Company~~, except~~

~~such officers as may be appointed in accordance with the provisions of **section 4.3** of these bylaws~~.

~~**4.3 Delegation of Authority to Appoint Officers**. The Board may empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint any officers as the business of the Company may require.~~

4.3 ~~**4.4**~~ **Removal and Resignation of Officers**. Any officer may be removed, either with or without cause, by the Board or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof ~~or by any officer upon whom such power of removal has been conferred by the Board or, for the avoidance of doubt, any duly authorized committee or subcommittee thereof~~.

Any officer may resign at any time by giving notice, in writing or by electronic transmission, to the Company. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party.

4.4 ~~**4.5**~~ **Vacancies in Offices**. Any vacancy occurring in any office of the Company shall be filled by the Board ~~or as provided in **section 4.3** of these bylaws~~.

4.5 ~~**4.6**~~ **Representation of Securities of Other Corporations or Entities**. Unless otherwise directed by the Board, the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President or any other person authorized by the Board, the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President is authorized to vote, represent and exercise on behalf of the Company all rights incident to any and all shares or other securities or interests in, or issued by, any other entity or entities, and all rights incident to any management authority conferred on the Company in accordance with the governing documents of any entity or entities, standing in the name of the Company, including the right to act by consent in lieu of a meeting. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

4.6 ~~**4.7**~~ **Authority and Duties of Officers**. Except as otherwise provided in these bylaws, the officers of the Company shall hold office for such period and have such powers and duties in the management of the Company as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board~~.~~; *provided however*, that, for the avoidance of doubt, unless expressly authorized by action of the Board approved pursuant to **section 2.13** of these bylaws following the Effective Time, no officer or agent of the Company shall have the power or authority to approve or take any action in furtherance of any debt or equity financing activities, including, without limitation, any initial public offering of securities of the Company.

ARTICLE V — INDEMNIFICATION

5.1 Indemnification of Directors and Officers in Third Party Proceedings. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") (other than an action by or in the right of the Company) by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's

conduct was unlawful. The termination of any Proceeding by judgment, order, settlement, conviction, or upon a plea of *nolo contendere* or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

5.2 Indemnification of Directors and Officers in Actions by or in the Right of the Company. Subject to the other provisions of this **Article V**, the Company shall indemnify, to the fullest extent permitted by the DGCL, as now or hereinafter in effect, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed Proceeding by or in the right of the Company to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Company, or is or was a director or officer of the Company serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such Proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Company; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Company unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

5.3 Successful Defense. To the extent that a present or former director or officer (for purposes of this **section 5.3** only, as such term is defined in Section 145(c)(1) of the DGCL) of the Company has been successful on the merits or otherwise in defense of any action, suit or proceeding described in **section 5.1** or **section 5.2** of these bylaws, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith. The Company may indemnify any other person who is not a present or former director or officer of the Company against expenses (including attorneys' fees) actually and reasonably incurred by such person to the extent he or she has been successful on the merits or otherwise in defense of any action, suit or proceeding described in **section 5.1** or **section 5.2**, or in defense of any claim, issue or matter therein.

5.4 Indemnification of Others. Subject to the other provisions of this **Article V**, the Company shall have power to indemnify its employees and agents, or any other persons, to the extent not prohibited by the DGCL or other applicable law. The Board shall have the power to delegate to any person or persons identified in subsections (1) through (4) of Section 145(d) of the DGCL the determination of whether employees or agents shall be indemnified.

5.5 Advanced Payment of Expenses. Expenses (including attorneys' fees) actually and reasonably incurred by an officer or director of the Company in defending any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of a written request therefor (together with documentation reasonably evidencing such expenses) and an undertaking by or on behalf of the person to repay such amounts if it shall ultimately be determined that the person is not entitled to be indemnified under this **Article V** or the DGCL. Such expenses (including attorneys' fees) actually and reasonably incurred by former directors and officers or other employees and agents of the Company or by persons serving at the request of the Company as directors, officers, employees or agents of another corporation, partnership, joint venture, trust or other enterprise may be so paid upon such terms and conditions, if any, as the Company deems appropriate. The right to advancement of expenses shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is excluded pursuant to these bylaws, but shall apply to any Proceeding (or any part of any Proceeding) referenced in **section 5.6(ii)** or **5.6(iii)** of these bylaws prior to a determination that the

person is not entitled to be indemnified by the Company.

5.6 Limitation on Indemnification. Subject to the requirements in **section 5.3** of these bylaws and the DGCL, the Company shall not be obligated to indemnify any person pursuant to this **Article V** in connection with any Proceeding (or any part of any Proceeding):

(i) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(ii) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(iii) for any reimbursement of the Company by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "**Sarbanes-Oxley Act**"), or the payment to the Company of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act), if such person is held liable therefor (including pursuant to any settlement arrangements);

(iv) initiated by such person, including any Proceeding (or any part of any Proceeding) initiated by such person against the Company or its directors, officers, employees, agents or other indemnitees, unless (a) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (b) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (c) otherwise required to be made under **section 5.7** of these bylaws or (d) otherwise required by applicable law; or

(v) if prohibited by applicable law.

5.7 Determination; Claim. If a claim for indemnification or advancement of expenses under this **Article V** is not paid by the Company or on its behalf within 90 days after receipt by the Company of a written request therefor, the claimant shall be entitled to an adjudication by a court of competent jurisdiction of his or her entitlement to such indemnification or advancement of expenses. To the extent not prohibited by law, the Company shall indemnify such person against all expenses actually and reasonably incurred by such person in connection with any action for indemnification or advancement of expenses from the Company under this **Article V**, to the extent such person is successful in such action. In any such suit, the Company shall, to the fullest extent not prohibited by law, have the burden of proving that the claimant is not entitled to the requested indemnification or advancement of expenses.

5.8 Non-Exclusivity of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to, this **Article V** shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the certificate of incorporation or any statute, bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. The Company is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advancement of expenses, to the fullest extent not prohibited by the DGCL or other applicable law.

5.9 Insurance. The Company may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Company, or is or was serving at the request of the Company as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in

any such capacity, or arising out of such person's status as such, whether or not the Company would have the power to indemnify such person against such liability under the provisions of the DGCL.

5.10 Survival. The rights to indemnification and advancement of expenses conferred by this **Article V** shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

5.11 Effect of Repeal or Modification. A right to indemnification or to advancement of expenses arising under a provision of the certificate of incorporation or a bylaw shall not be eliminated or impaired by an amendment to or repeal or elimination of the certificate of incorporation or these bylaws after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.

5.12 Certain Definitions. For purposes of this **Article V**, references to the "**Company**" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this **Article V** with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. For purposes of this **Article V**, references to "**other enterprises**" shall include employee benefit plans; references to "**fines**" shall include any excise taxes assessed on a person with respect to an employee benefit plan; references to "**serving at the request of the Company**" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "**not opposed to the best interests of the Company**" as referred to in this **Article V**.

ARTICLE VI — STOCK

6.1 Stock Certificates; Partly Paid Shares. The shares of the Company shall be represented by certificates, *provided* that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Company. Unless otherwise provided by resolution of the Board, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of, the Company by any two officers of the Company representing the number of shares 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 has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Company with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Company shall not have power to issue a certificate in bearer form.

The Company may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Company in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Company shall declare a dividend upon partly paid shares of the same class, but only upon the basis of

the percentage of the consideration actually paid thereon.

6.2 Special Designation on Certificates. If the Company is authorized to issue more than one class of stock or more than one series of any class, then the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Company shall issue to represent such class or series of stock; *provided* that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Company shall issue to represent such class or series of stock, a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this **section 6.2** or Sections 156, 202(a), 218(a) or 364 of the DGCL or with respect to this **section 6.2** a statement that the Company will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

6.3 Lost Certificates. Except as provided in this **section 6.3**, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Company and cancelled at the same time. The Company may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Company may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company 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.

6.4 Dividends. The Board, subject to any restrictions contained in the certificate of incorporation or applicable law, may declare and pay dividends upon the shares of the Company's capital stock. Dividends may be paid in cash, in property or in shares of the Company's capital stock, subject to the provisions of the certificate of incorporation.

The Board may set apart out of any of the funds of the Company available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

6.5 Stock Transfer Agreements. The Company shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Company to restrict the transfer of shares of stock of the Company of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

6.6 Registered Stockholders. The Company:

(i) shall be entitled to treat the person registered on its books as the owner of any share or shares as the person exclusively entitled to receive dividends, vote, receive notifications and otherwise exercise all the rights and powers of an owner of such share or shares; and

(ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

6.7 Transfers. Transfers of record of shares of stock of the Company shall be made only upon its books by the holders thereof, in person or by an attorney duly authorized, and, if such stock is

certificated, upon the surrender of a certificate or certificates for a like number of shares, properly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer.

ARTICLE VII — MANNER OF GIVING NOTICE AND WAIVER

7.1 Delivery of Notice; Notice by Electronic Transmission.

(a) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under any provision of the DGCL, the certificate of incorporation or these bylaws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the Company and shall be given (i) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the Company in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by **section 7.1(e)** of these bylaws. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Company.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, but subject to **section 7.1(e)** of these bylaws, any notice to stockholders given by the Company 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. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the Company. The Company may give a notice by electronic mail in accordance with **section 7.1(a)** of these bylaws without obtaining the consent required by this **section 7.1(b)**.

(c) Notice given pursuant to **section 7.1(b)** of these bylaws shall be deemed given:

(1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;

(2) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and

(3) if by any other form of electronic transmission, when directed to the stockholder.

(d) For purposes of the DGCL, the certificate of incorporation and these bylaws, (i) "**electronic transmission**" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process; (ii) "**electronic mail**" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Company who is available to assist with accessing such files and information); and (iii) "**electronic mail address**" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to

as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

(e) Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (i) the Company is unable to deliver by such electronic transmission two consecutive notices given by the Company and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Company or to the transfer agent, or other person responsible for the giving of notice; *provided, however,* the inadvertent failure to discover such inability shall not invalidate any meeting or other action.

(f) An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Company that notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

(g) No provision of this **section 7.1**, except for **subsections 7.1(a)(i), 7.1(d)(ii) and 7.1(d)(iii)**, shall apply to Sections 164, 296, 311, 312 or 324 of the DGCL.

7.2 Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Company under the provisions of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Any such consent shall be revocable by the stockholder by written notice to the Company. Any stockholder who fails to object in writing to the Company, within 60 days of having been given written notice by the Company of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

7.3 Notice to Person with Whom Communication is Unlawful. Whenever notice is required to be given, under the DGCL, the certificate of incorporation or these bylaws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Company is such as to require the filing of a certificate under the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

7.4 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, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, 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 need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII — GENERAL MATTERS

8.1 Fiscal Year. The fiscal year of the Company shall be fixed by resolution of the Board and may be changed by the Board.

8.2 Seal. The Company may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Company may use the corporate seal by causing it or a

facsimile thereof to be impressed or affixed or in any other manner reproduced.

8.3 Annual Report. The Company shall cause an annual report to be sent to the stockholders of the Company to the extent required by applicable law. If and so long as there are fewer than 100 holders of record of the Company's shares, the requirement of sending an annual report to the stockholders of the Company is expressly waived (to the extent permitted under applicable law).

8.4 Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "**person**" includes a corporation, any other entity and a natural person.

8.5 Severability. To the extent that any provision of these bylaws (including without limitation any provision of this paragraph) is found to be invalid or unenforceable: (1) such invalidity or unenforceability shall not affect the validity or enforceability of any other provision of these bylaws; (2) such provision found to be invalid shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent manifested by such provision; and (3) to the fullest extent possible, the provisions these bylaws shall be construed so as to give effect to the intent manifested thereby.

ARTICLE IX — AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote. However, the Company may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

A bylaw amendment adopted by stockholders which specifies the votes that shall be necessary for the election of directors shall not be further amended or repealed by the Board.

Summary report: **Litera Compare for Word 11.4.0.111 Document comparison done on 2/16/2025 7:42:20 PM**	
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Intelligent Table Comparison: Active	
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Modified DMS: iw://work.mnat.com/WILM/18748475/5	
Changes:	
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~~Delete~~	182
~~Move From~~	3
Move To	3
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Table moves to	0
~~Table moves from~~	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	249

Exhibit D

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AURION BIOTECH, INC.

AMENDED AND RESTATED

VOTING AGREEMENT

December 13, **2022**

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AURION BIOTECH, INC.

AMENDED AND RESTATED VOTING AGREEMENT

THIS AMENDED AND RESTATED VOTING AGREEMENT (this "**Agreement**"), is made and entered into as of this 13th day of Dec, 2022 by and among Aurion Biotech, Inc., a Delaware corporation (the "**Company**"), each holder of the Company's Series A Preferred Stock, $0.0001 par value per share ("**Series A Preferred Stock**"), each holder of the Company's Series B Preferred Stock, $0.0001 par value per share ("**Series B Preferred Stock**"), each holder of the Company's Series B-1 Preferred Stock, $0.0001 par value per share ("**Series B-1 Preferred Stock**"), each holder of the Company's Series C Preferred Stock, $0.0001 par value per share ("**Series C Preferred Stock**"), each holder of the Company's Series C-1 Preferred Stock, $0.0001 par value per share ("**Series C-1 Preferred Stock**" and together with the Series A Preferred Stock, the Series B Preferred Stock, the Series B-1 Preferred Stock and the Series C Preferred Stock, the "**Preferred Stock**") listed on Schedule A (together with any subsequent investors, or transferees, who become parties hereto as "Investors" pursuant to Subsections 7.1(a) or 7.2 below, the "**Investors**"), and those certain stockholders of the Company and holders of options to acquire shares of the capital stock of the Company listed on Schedule B (together with any subsequent stockholders or option holders, or any transferees, who become parties hereto as "Key Holders" pursuant to Subsections 7.1(b) or 7.2 below, the "**Key Holders**," and together collectively with the Investors, the "**Stockholders**").

RECITALS

A. Certain of the Investors are parties to that certain Preferred Stock Purchase Agreement, dated April 5, 2022, by and among the Company and certain of the Investors (the "**Purchase Agreement**");

B. Pursuant to the Company's Amended and Restated Certificate of Incorporation, as may be amended from time to time (the "**Certificate**"), (i) the holders of Series C Preferred Stock, voting as a separate class, are entitled to elect two (2) directors (the "**Series C Directors**") to serve on the Board; (ii) the holders of Series B Preferred Stock and Series B-1 Preferred Stock, voting together as a separate class, are entitled to elect one (1) director (the "**Series B Director**") to serve on the Board; (iii) the holders of Series A Preferred Stock, voting as a separate class, are entitled to elect one (1) director (the "**Series A Director**") to serve on the Board; and (iv) the holders of the Preferred Stock and the Company's Common Stock, $0.0001 par value per share ("**Common Stock**"), voting together as a single class on an as-converted basis, are entitled to elect the remaining directors to serve on the Board.

C. The Investors possess certain voting rights and other rights pursuant to the Voting Agreement dated as of April 5, 2022, by and among the Company and the Investors (the "**Prior Agreement**").

D. Section 7.8 of the Prior Agreement provides that the Prior Agreement may be amended or modified, upon the written consent of: (i) the Company; (ii) the holders of a majority of the shares of Common Stock (as defined therein) issued or issuable upon conversion of the shares of Preferred Stock (as defined therein) held by the Investors (as defined therein) (voting together as a single class and on an as-converted basis); (iii) the Requisite Series C Holders (as

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defined therein); and (iv) with respect to Section 3 of the Prior Agreement, Deerfield (as defined therein)(clauses (ii), (iii), and (iv) collectively, the "**Required Holders**").

E. The Company and the undersigned Required Holders desire to amend and restate the Prior Agreement and further desire that this Agreement supersede and replace the Prior Agreement in its entirety.

F.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Voting Provisions Regarding Board of Directors.

1.1 Size of the Board. Subject to Section 7.20, each Stockholder agrees to vote, or cause to be voted, all Shares (as defined below) owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that the size of the Board shall be set and remain at seven (7) directors. For purposes of this Agreement, the term "Shares" shall mean and include any securities of the Company that the holders of which are entitled to vote for members of the Board, including without limitation, all shares of Common Stock and Preferred Stock, by whatever name called, now owned or subsequently acquired by a Stockholder, however acquired, whether through stock splits, stock dividends, reclassifications, recapitalizations, similar events or otherwise.

1.2 Board Composition. Subject to Section 7.20, each Stockholder agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that at each annual or special meeting of stockholders at which an election of directors is held or pursuant to any written consent of the stockholders, the following persons shall be elected to the Board:

(a) One (1) individual designated by Sightlife II, LLC, a Delaware limited liability company (together with its Affiliates "**Sightlife II**"), to serve as the Series A Director, which individual shall initially be Dr. William Link;

(b) One (1) individual designated by Petrichor Opportunities Fund I LP (together with its Affiliates, "**Petrichor**"), to serve as the Series B Director, which individual shall initially be Patrick Lally;

(c) One (1) individual designated Deerfield Private Design Fund V, L.P. and Deerfield Healthcare Innovations Fund II, L.P. (together with its Affiliates ("**Deerfield**")), to serve as one Series C Director, which individual shall initially be Andrew ElBardissi;

(d) One (1) individual designated by Alcon Research, LLC (together with its Affiliates, "**Alcon**"), to serve as one Series C Director, which individual shall initially be Jeannette Bankes;

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(e) The Company's Chief Executive Officer, who as of the date of this Agreement is Greg Kunst (the "**CEO Director**"), provided that if for any reason the CEO Director shall cease to serve as the Chief Executive Officer of the Company, each of the Stockholders shall promptly vote their respective Shares (i) to remove the former Chief Executive Officer of the Company from the Board if such person has not resigned as a member of the Board; and (ii) to elect such person's replacement as Chief Executive Officer of the Company as the new CEO Director; and

(f) Two individuals who are mutually acceptable to the other members of the Board, which individuals shall initially be Tom Frinzi and Christine McCauley.

To the extent that any of clauses (a) through (e) above shall not be applicable, any member of the Board who would otherwise have been designated in accordance with the terms thereof shall instead be voted upon by all the stockholders of the Company entitled to vote thereon in accordance with, and pursuant to, the Certificate.

For purposes of this Agreement, an individual, firm, corporation, partnership, association, limited liability company or other entity (a "**Person**") shall be deemed an "**Affiliate**" of another Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer, director or trustee of such Person, or any venture capital fund, investment fund or registered investment company now or hereafter existing that is controlled by one or more general partners, managing members or investment advisers of, or shares the same management company or investment adviser with, such Person; provided, that with respect to Deerfield, the definition of "Affiliate" shall also include its other equityholders, partners (including partners and affiliated partnerships managed by the same management company or managing (general) partner or by any person that is an Affiliate with such management company or managing (general) partner), members and a trust for the benefit of such other equityholders of Deerfield.

1.3 Failure to Designate a Board Member. In the absence of any designation from the Persons or groups with the right to designate a director as specified above, the director previously designated by them and then serving shall be reelected if still eligible and willing to serve unless such individual has been removed as provided herein and otherwise, such Board seat shall remain vacant until otherwise filled as provided above.

1.4 Removal of Board Members. Subject to Section 7.20, each Stockholder also agrees to vote, or cause to be voted, all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to ensure that:

(a) no director elected pursuant to Subsections 1.2 or 1.3 of this Agreement may be removed from office other than for cause unless (i) such removal is directed or approved by the affirmative vote of the Person entitled under Subsection 1.2 to designate that director, or in the case of a director elected pursuant to Section 1.2(f), an affirmative vote of the Board, or (ii) the Person(s) originally entitled to designate or approve such director or occupy such Board seat pursuant to Subsection 1.2 is no longer so entitled to designate or approve such director or occupy such Board seat.

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(b) any vacancies created by the resignation, removal or death of a director elected pursuant to Subsections 1.2 or 1.3 shall be filled pursuant to the provisions of this Section 1; and

(c) upon the request of any party entitled to designate a director as provided in Subsection 1.2(a), 1.2(b), 1.2(b), and 1.2(c) to remove such director, such director shall be removed.

All Stockholders agree to execute any written consents required to perform the obligations of this Agreement, and the Company agrees at the request of any party entitled to designate directors to call a special meeting of stockholders for the purpose of electing directors.

1.5 No Liability for Election of Recommended Directors. No Stockholder, nor any Affiliate of any Stockholder, shall have any liability as a result of designating a person for election as a director for any act or omission by such designated person in his or her capacity as a director of the Company, nor shall any Stockholder have any liability as a result of voting for any such designee in accordance with the provisions of this Agreement.

2. Vote to Increase Authorized Common Stock. Subject to Section 7.20, each Stockholder agrees to vote or cause to be voted all Shares owned by such Stockholder, or over which such Stockholder has voting control, from time to time and at all times, in whatever manner as shall be necessary to increase the number of authorized shares of Common Stock from time to time to ensure that there will be sufficient shares of Common Stock available for conversion of all of the shares of Preferred Stock outstanding at any given time.

3. Drag-Along Right.

3.1 Definitions. A "**Company Transaction**" shall mean: (a) a transaction or series of related transactions in which a Person, or a group of related Persons, acquires from stockholders of the Company shares representing more than fifty percent (50%) of the outstanding voting power of the Company (for the avoidance of doubt, without giving effect to limitations associated with the Voting Threshold) (a "**Stock Sale**"); (b) a transaction that qualifies as a "**Deemed Liquidation Event**" as defined in the Certificate (each such transaction described in clauses (a) and (b), a "**Sale of the Company**"); or (c) an arm's length debt or equity financing of the Company.

3.2 Actions to be Taken. In the event that a Company Transaction is approved by (i) the holders of at least 66.7% of the shares of Common Stock then issued or issuable upon conversion of the shares of then outstanding shares of Series C Preferred Stock (for the avoidance of doubt, without giving effect to limitations associated with the Voting Threshold) (the "**Requisite Series C Holders**") and (ii) the holders of a majority of the then outstanding shares of Common Stock (other than those issued or issuable upon conversion of the shares of Preferred Stock) beneficially owned by Key Holders who are then providing services to the Company as officers, employees or consultants voting as a separate class, (specifying in writing that this Section 3 shall apply to such transaction) (collectively, the "**Selling Investors**"), then, subject to satisfaction of each of the conditions set forth in Subsection 3.3 below, each Stockholder and the Company hereby agree:

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(a) if such transaction requires stockholder approval, with respect to all Shares that such Stockholder owns or over which such Stockholder otherwise exercises voting power, to vote (in person, by proxy or by action by written consent, as applicable, but subject to Section 7.20) all Shares in favor of, and adopt, such Company Transaction (together with any related amendment or restatement to the Certificate required in order to implement such Company Transaction) and to vote in opposition to any and all other proposals that could reasonably be expected to delay or impair the ability of the Company to consummate such Company Transaction;

(b) if such transaction is a Stock Sale, to sell the same proportion of shares of capital stock of the Company beneficially owned by such Stockholder as is being sold by the Selling Investors to the Person to whom the Selling Investors propose to sell their Shares, and, except as permitted in Subsection 3.3 below, on the same terms and conditions as the other stockholders of the Company;

(c) to execute and deliver all related documentation and take such other action in support of the Company Transaction as shall reasonably be requested by the Company or the Selling Investors in order to carry out the terms and provision of this Section 3, including, without limitation, executing and delivering instruments of conveyance and transfer, and any purchase agreement, merger agreement, any associated indemnity agreement, or escrow agreement, any associated voting, support, or joinder agreement, consent, waiver, governmental filing, share certificates duly endorsed for transfer (free and clear of impermissible liens, claims and encumbrances), and any similar or related documents;

(d) not to deposit, and to cause their Affiliates not to deposit, except as provided in this Agreement, any Shares of the Company beneficially owned by such party or Affiliate in a voting trust or subject any Shares to any arrangement or agreement with respect to the voting of such Shares, unless specifically requested to do so by the acquiror in connection with the Company Transaction;

(e) to refrain from (i) exercising any dissenters' rights or rights of appraisal under applicable law at any time with respect to such Company Transaction, or (ii) asserting any claim or commencing any suit (x) challenging the Company Transaction or this Agreement or (y) alleging a breach of any fiduciary duty of the Selling Investors, or any affiliate or associate thereof (including, without limitation, aiding and abetting breach of fiduciary duty) in connection with the evaluation, negotiation or entry into the Company Transaction or the consummation of the transaction contemplated thereby;

(f) if the consideration to be paid in exchange for the Shares pursuant to this Section 3 includes any securities and due receipt thereof by any Stockholder would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Stockholder of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Stockholder in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Stockholder, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such

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Stockholder would otherwise receive as of the date of the issuance of such securities in exchange for the Shares; and

(g) in the event that the Selling Investors, in connection with such Sale of the Company, appoint a stockholder representative (the "**Stockholder Representative**") with respect to matters affecting the Stockholders under the applicable definitive transaction agreements following consummation of such Sale of the Company, (x) to consent to (i) the appointment of such Stockholder Representative, (ii) the establishment of any applicable escrow, expense or similar fund in connection with any indemnification or similar obligations, and (iii) the payment of such Stockholder's pro rata portion (from the applicable escrow or expense fund or otherwise) of any and all reasonable fees and expenses to such Stockholder Representative in connection with such Stockholder Representative's services and duties in connection with such Sale of the Company and its related service as the representative of the Stockholders, and (y) not to assert any claim or commence any suit against the Stockholder Representative or any other Stockholder with respect to any action or inaction taken or failed to be taken by the Stockholder Representative, within the scope of the Stockholder Representative's authority, in connection with its service as the Stockholder Representative, absent fraud, bad faith, gross negligence or willful misconduct.

3.3 Exceptions. Notwithstanding anything to the contrary set forth herein, a Stockholder will not be required to comply with Subsection 3.2 above in connection with any proposed Company Transaction (the "**Proposed Transaction**"), unless:

(a) any representations and warranties to be made by such Stockholder in connection with the Proposed Transaction are limited to representations and warranties related to authority, ownership and the ability to convey title to such Shares, including, but not limited to, representations and warranties that (i) the Stockholder beneficially owns all right, title and interest in and to the Shares such Stockholder purports to beneficially own, free and clear of all liens and encumbrances, (ii) the obligations of the Stockholder in connection with the transaction have been duly authorized, if applicable, (iii) the documents to be entered into by the Stockholder have been duly executed by the Stockholder and delivered to the acquirer and are enforceable (subject to customary limitations) against the Stockholder in accordance with their respective terms; and (iv) neither the execution and delivery of documents to be entered into by the Stockholder in connection with the transaction, nor the performance of the Stockholder's obligations thereunder, will cause a breach or violation of the terms of any agreement to which the Stockholder is a party, or any law or judgment, order or decree of any court or governmental agency that applies to the Stockholder;

(b) such Stockholder is not required to agree (unless such Stockholder is a Company officer or employee) to any restrictive covenant in connection with the Proposed Transaction (including without limitation any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the Proposed Transaction) or any release of claims other than a release in customary form of claims arising solely in such Stockholder's capacity as a stockholder of the Company;

(c) such Stockholder and its Affiliates are not required to amend, extend or terminate any contractual or other relationship with the Company, the acquirer or their

respective Affiliates, except that the Stockholder may be required to agree to terminate the investment-related documents between or among such Stockholder, the Company and/or other stockholders of the Company;

(d) the Stockholder is not liable for the breach of any representation, warranty or covenant made by any other Person in connection with the Proposed Transaction, other than the Company (except to the extent that funds may be paid out of an escrow established to cover breach of representations, warranties and covenants of the Company as well as breach by any stockholder of any of identical representations, warranties and covenants provided by all stockholders);

(e) liability shall be limited to such Stockholder's applicable share (determined based on the respective proceeds payable to each Stockholder in connection with such Proposed Transaction in accordance with the provisions of the Certificate) of a negotiated aggregate indemnification amount that applies equally to all Stockholders but that in no event exceeds the amount of consideration otherwise payable to such Stockholder in connection with such Proposed Transaction, except with respect to claims related to fraud by such Stockholder, the liability for which need not be limited as to such Stockholder.

(f) upon the consummation of the Sale of the Company (i) each holder of each class or series of the capital stock of the Company will receive the same form of consideration for their shares of such class or series as is received by other holders in respect of their shares of such same class or series of stock, and if any holders of any capital stock of the Company are given a choice as to the form of consideration to be received as a result of the Sale of the Company, all holders of such capital stock will be given the same option, (ii) each holder of a series of Preferred Stock will receive the same amount of consideration per share of such series of Preferred Stock as is received by other holders in respect of their shares of such same series, (iii) each holder of Common Stock will receive the same amount of consideration per share of Common Stock as is received by other holders in respect of their shares of Common Stock, and (iv) unless waived pursuant to the terms of the Certificate and as may be required by law, the aggregate consideration receivable by all holders of the Preferred Stock and Common Stock shall be allocated among the holders of Preferred Stock and Common Stock on the basis of the relative liquidation preferences to which the holders of each respective series of Preferred Stock and the holders of Common Stock are entitled in a Deemed Liquidation Event (assuming for this purpose that the Sale of the Company is a Deemed Liquidation Event) in accordance with the Certificate in effect immediately prior to the Sale of the Company; provided, however, that, notwithstanding the foregoing provisions of this Subsection 3.3(f), if the consideration to be paid in exchange for the Shares pursuant to this Subsection 3.3(f) includes any securities and due receipt thereof by any Key Holder or Investor would require under applicable law (x) the registration or qualification of such securities or of any person as a broker or dealer or agent with respect to such securities; or (y) the provision to any Key Holder or Investor of any information other than such information as a prudent issuer would generally furnish in an offering made solely to "accredited investors" as defined in Regulation D promulgated under the Securities Act, the Company may cause to be paid to any such Key Holder or Investor in lieu thereof, against surrender of the Shares which would have otherwise been sold by such Key Holder or Investor, an amount in cash equal to the fair value (as determined in good faith by the Board) of the securities which such Key Holder or Investor would otherwise receive as of the date of the issuance of such securities in exchange for the Shares;

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(g) subject to clause (f) above, requiring the same form of consideration to be available to the holders of any single class or series of capital stock, if any holders of any capital stock of the Company are given an option as to the form and amount of consideration to be received as a result of the Sale of the Company, all holders of such capital stock will be given the same option; provided, however, that nothing in this Subsection 3.3(g) shall entitle any holder to receive any form of consideration that such holder would be ineligible to receive as a result of such holder's failure to satisfy any condition, requirement or limitation that is generally applicable to the Company's stockholders.

3.4 Restrictions on Sales of Control of the Company. No Stockholder shall be a party to any Stock Sale unless all holders of Preferred Stock are allowed to participate in such transaction and the consideration received pursuant to such transaction is allocated among the parties thereto in the manner specified in the Certificate in effect immediately prior to the Stock Sale (as if such transaction were a Deemed Liquidation Event), unless the holders of at least a majority of the Preferred Stock (voting together as a single class on an as-converted basis) (for the avoidance of doubt, without giving effect to limitations associated with the Voting Threshold) and the Requisite Series C Holders elect otherwise by written notice given to the Company at least ten (10) days prior to the effective date of any such transaction or series of related transactions.

4. Remedies.

4.1 Covenants of the Company. The Company agrees to use its best efforts, within the requirements of applicable law, to ensure that the rights granted under this Agreement are effective and that the parties enjoy the benefits of this Agreement. Such actions include, without limitation, the use of the Company's best efforts to cause the nomination and election of the directors as provided in this Agreement.

4.2 Irrevocable Proxy and Power of Attorney. Each party to this Agreement hereby constitutes and appoints as the proxies of the party and hereby grants a power of attorney to the President of the Company, and a designee of the Selling Investors, and each of them, with full power of substitution, with respect to the matters set forth herein, including, without limitation, votes regarding the size and composition of the Board pursuant to Section 1 hereto, votes to increase authorized shares pursuant to Section 2 hereof and votes regarding any Company Transaction pursuant to Section 3 hereof, and hereby authorizes each of them to represent and vote, if and only if the party (i) fails to vote, or (ii) attempts to vote (whether by proxy, in person or by written consent), in a manner which is inconsistent with the terms of this Agreement, all of such party's Shares in favor of the election of persons as members of the Board determined pursuant to and in accordance with the terms and provisions of this Agreement or the increase of authorized shares or approval of any Company Transaction pursuant to and in accordance with the terms and provisions of Sections 1, 2 and 3, respectively, of this Agreement or to take any action reasonably necessary to effect Sections 1, 2 and 3, respectively, of this Agreement. The power of attorney granted hereunder shall authorize the President of the Company to execute and deliver the documentation referred to in Section 3.2(c) on behalf of any party failing to do so within five (5) business days of a request by the Company. Each of the proxy and power of attorney granted pursuant to this Section 4.2 is given in consideration of the agreements

and covenants of the Company and the parties in connection with the transactions contemplated by this Agreement and, as such, each is coupled with an interest and shall be irrevocable unless and until this Agreement terminates or expires pursuant to Section 6 hereof. Each party hereto hereby revokes any and all previous proxies or powers of attorney with respect to the Shares and shall not hereafter, unless and until this Agreement terminates or expires pursuant to Section 6 hereof, purport to grant any other proxy or power of attorney with respect to any of the Shares, deposit any of the Shares into a voting trust or enter into any agreement (other than this Agreement), arrangement or understanding with any person, directly or indirectly, to vote, grant any proxy or give instructions with respect to the voting of any of the Shares, in each case, with respect to any of the matters set forth herein.

4.3 Specific Enforcement. Each party acknowledges and agrees that each party hereto will be irreparably damaged in the event any of the provisions of this Agreement are not performed by the parties in accordance with their specific terms or are otherwise breached. Accordingly, it is agreed that each of the Company and the Stockholders shall be entitled to an injunction to prevent breaches of this Agreement, and to specific enforcement of this Agreement and its terms and provisions in any action instituted in any court of the United States or any state having subject matter jurisdiction.

4.4 Remedies Cumulative. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

5. “Bad Actor” Matters.

5.1 Definitions. For purposes of this Agreement:

(a) “**Company Covered Person**” means, with respect to the Company as an “issuer” for purposes of Rule 506 promulgated under the Securities Act, any Person listed in the first paragraph of Rule 506(d)(1).

(b) “**Disqualified Designee**” means any director designee to whom any Disqualification Event is applicable, except for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable.

(c) “**Disqualification Event**” means a “bad actor” disqualifying event described in Rule 506(d)(1)(i)-(viii) promulgated under the Securities Act.

(d) “**Rule 506(d) Related Party**” means, with respect to any Person, any other Person that is a beneficial owner of such first Person’s securities for purposes of Rule 506(d) under the Securities Act.

5.2 Representations.

(a) Each Person with the right to designate or participate in the designation of a director pursuant to this Agreement hereby represents that (i) such Person has exercised reasonable care to determine whether any Disqualification Event is applicable to such Person, any director designee designated by such Person pursuant to this Agreement or any of such Person’s Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule

506(d)(2)(ii) or (iii) or (d)(3) is applicable and (ii) no Disqualification Event is applicable to such Person, any Board member designated by such Person pursuant to this Agreement or any of such Person's Rule 506(d) Related Parties, except, if applicable, for a Disqualification Event as to which Rule 506(d)(2)(ii) or (iii) or (d)(3) is applicable. Notwithstanding anything to the contrary in this Agreement, each Investor makes no representation regarding any Person that may be deemed to be a beneficial owner of the Company's voting equity securities held by such Investor solely by virtue of that Person being or becoming a party to (x) this Agreement, as may be subsequently amended, or (y) any other contract or written agreement to which the Company and such Investor are parties regarding (1) the voting power, which includes the power to vote or to direct the voting of, such security; and/or (2) the investment power, which includes the power to dispose, or to direct the disposition of, such security.

(b) The Company hereby represents and warrants to the Investors that no Disqualification Event is applicable to the Company or, to the Company's knowledge, any Company Covered Person, except for a Disqualification Event as to which Rule 506(d)(2)(ii)-(iv) or (d)(3) is applicable.

6. Term. This Agreement shall be effective as of the date hereof and shall continue in effect until and shall terminate upon the earliest to occur of (a) the consummation of the Company's first underwritten public offering of its Common Stock (other than a registration statement relating either to the sale of securities to employees of the Company pursuant to its stock option, stock purchase or similar plan or an SEC Rule 145 transaction); (b) the consummation of a Deemed Liquidation Event, as such term is defined in the Certificate, provided that the provisions of Section 3 hereof will continue after the closing of any Sale of the Company to the extent necessary to enforce the provisions of Section 3 with respect to such Sale of the Company; and (c) termination of this Agreement in accordance with Subsection 7.8 below.

7. Miscellaneous.

7.1 Additional Parties.

(a) Notwithstanding anything to the contrary contained herein, if the Company issues additional shares of Preferred Stock after the date hereof, as a condition to the issuance of such shares the Company shall require that any purchaser of shares of Preferred Stock become a party to this Agreement by executing and delivering (i) the Adoption Agreement attached to this Agreement as Exhibit A, or (ii) a counterpart signature page hereto agreeing to be bound by and subject to the terms of this Agreement as an Investor and Stockholder hereunder. In either event, each such person shall thereafter be deemed an Investor and Stockholder for all purposes under this Agreement.

(b) In the event that after the date of this Agreement, the Company enters into an agreement with any Person to issue shares of capital stock to such Person (other than to a purchaser of Preferred Stock described in Subsection 7.1(a) above), following which such Person shall beneficially hold Shares constituting one percent (1%) or more of the Company's then outstanding capital stock, the Company shall cause such Person, as a condition precedent to entering into such agreement, to become a party to this Agreement by executing an Adoption Agreement in the form attached hereto as Exhibit A, agreeing to be bound by and subject to the

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terms of this Agreement as a Stockholder and thereafter such person shall be deemed a Stockholder for all purposes under this Agreement.

7.2 Transfers. Each transferee or assignee of any Shares subject to this Agreement shall continue to be subject to the terms hereof, and, as a condition precedent to the Company's recognizing such transfer, each transferee or assignee shall agree in writing to be subject to each of the terms of this Agreement by executing and delivering an Adoption Agreement substantially in the form attached hereto as Exhibit A. Upon the execution and delivery of an Adoption Agreement by any transferee, such transferee shall be deemed to be a party hereto as if such transferee were the transferor and such transferee's signature appeared on the signature pages of this Agreement and shall be deemed to be an Investor and Stockholder, or Key Holder and Stockholder, as applicable. The Company shall not permit the transfer of the Shares subject to this Agreement on its books or issue a new certificate representing any such Shares unless and until such transferee shall have complied with the terms of this Subsection 7.2. Each certificate instrument, or book entry representing the Shares subject to this Agreement if issued on or after the date of this Agreement shall be notated by the Company with the legend set forth in Subsection 7.12.

7.3 Successors and Assigns. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations, or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement.

7.4 Governing Law. This Agreement shall be governed by the internal law of the State of Delaware, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Delaware.

7.5 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

7.6 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

7.7 Notices.

(a) All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (a) personal delivery to the party to be notified, (b) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or

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certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after the business day of deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All communications shall be sent to the respective parties at their address as set forth on Schedule A or Schedule B hereto, or to such email address or address as subsequently modified by written notice given in accordance with this Subsection 7.7(a). If notice is given to the Company, a copy shall also be sent to Wilson Sonsini Goodrich & Rosati, P.C., 701 Fifth Avenue, Suite 5100, Seattle, WA 98104-7036, Attn: Michael Nordtvedt and to KQD Law, PLLC, Kha@kqdlaw.com, Attn: Kha Dang, and if notice is given to Stockholders, a copy shall also be given to McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017, Attn: Todd Finger (or tfinger@mwe.com) and Arnold & Porter, 250 West 55th Street, New York, NY 10019, Attn: Derek Stoldt (or derek.stoldt@arnoldporter.com).

(b) Each Stockholder consents to the delivery of any stockholder notice pursuant to the Delaware General Corporation Law (the "**DGCL**"), as amended or superseded from time to time, by electronic transmission pursuant to Section 232 of the DGCL (or any successor thereto) at the electronic mail address set forth below such Stockholder's name on the Schedules hereto, as updated from time to time by notice to the Company, or as on the books of the Company. To the extent that any notice given by means of electronic transmission is returned or undeliverable for any reason, the foregoing consent shall be deemed to have been revoked until a new or corrected electronic mail address has been provided, and such attempted electronic notice shall be ineffective and deemed to not have been given. Each Stockholder agrees to promptly notify the Company of any change in such Stockholder's electronic mail address, and that failure to do so shall not affect the foregoing.

7.8 Consent Required to Amend, Terminate or Waive. This Agreement may be amended, modified or terminated (other than pursuant to Section 6) and the observance of any term hereof may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument executed by (i) the Company; (ii) the holders of a majority of the shares of Common Stock issued or issuable upon conversion of the shares of Preferred Stock beneficially owned by the Investors (voting together as a single class and on an as-converted basis) (for the avoidance of doubt, without giving effect to limitations associated with the Voting Threshold); and (iii) the Requisite Series C Holders. Notwithstanding the foregoing:

(a) this Agreement may not be amended, modified or terminated and the observance of any term of this Agreement may not be waived with respect to any Investor or Key Holder without the written consent of such Investor or Key Holder unless such amendment, modification, termination or waiver applies to all Investors or Key Holders, as the case may be, in the same fashion;

(b) the consent of the Key Holders shall not be required for any amendment, modification, termination or waiver if such amendment, modification, termination or waiver either (A) is not directly applicable to the rights of the Key Holders hereunder; or (B) does not adversely affect the rights of the Key Holders in a manner that is different than the effect on the rights of the other parties hereto;

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(c) Schedule A and Schedule B hereto may be amended by the Company from time to time in accordance with Section 7.1 to add information regarding additional Stockholders without the consent of the other parties hereto;

(d) any provision hereof may be waived by the waiving party on such party's own behalf, without the consent of any other party;

(e) Subsection 1.2(a) and this Subsection 7.8(f) shall not be amended, modified, terminated or waived without the written consent of SightLife II;

(f) Subsection 1.2(b) and this Subsection 7.8(f) shall not be amended, modified, terminated or waived without the written consent of Petrichor.

(g) Subsection 1.2(b), Section 3 and this Subsection 7.8(g) shall not be amended, modified, terminated or waived without the written consent of Deerfield; and

(h) Subsection 1.2(d), Section 7.20 and this Subsection 7.8(h) shall not be amended, modified, terminated or waived without the written consent of Alcon.

The Company shall give prompt written notice of any amendment, modification, termination, or waiver hereunder to any party that did not consent in writing thereto. Any amendment, modification, termination, or waiver effected in accordance with this Subsection 7.8 shall be binding on each party and all of such party's successors and permitted assigns, whether or not any such party, successor or assignee entered into or approved such amendment, modification, termination or waiver. For purposes of this Subsection 7.8, the requirement of a written instrument may be satisfied in the form of an action by written consent of the Stockholders circulated by the Company and executed by the Stockholder parties specified, whether or not such action by written consent makes explicit reference to the terms of this Agreement.

7.9 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default previously or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

7.10 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

7.11 Entire Agreement. This Agreement (including the Exhibits hereto) and the Certificate constitute the full and entire understanding and agreement between the

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parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties is expressly canceled.

7.12 Share Certificate Legend. Each certificate, instrument, or book entry representing any Shares issued after the date hereof shall be notated by the Company with a legend reading substantially as follows:

"THE SECURITIES REPRESENTED HEREBY ARE SUBJECT TO A VOTING AGREEMENT, AS MAY BE AMENDED FROM TIME TO TIME, (A COPY OF WHICH MAY BE OBTAINED UPON WRITTEN REQUEST FROM THE COMPANY), AND BY ACCEPTING ANY INTEREST IN SUCH SHARES THE PERSON ACCEPTING SUCH INTEREST SHALL BE DEEMED TO AGREE TO AND SHALL BECOME BOUND BY ALL THE PROVISIONS OF THAT VOTING AGREEMENT, INCLUDING CERTAIN RESTRICTIONS ON TRANSFER AND OWNERSHIP SET FORTH THEREIN."

The Company, by its execution of this Agreement, agrees that it will cause the certificates instruments, or book entry evidencing the Shares issued after the date hereof to be notated with the legend required by this Subsection 7.12 of this Agreement, and it shall supply, free of charge, a copy of this Agreement to any holder of such Shares upon written request from such holder to the Company at its principal office. The parties to this Agreement do hereby agree that the failure to cause the certificates, instruments, or book entry evidencing the Shares to be notated with the legend required by this Subsection 7.12 herein and/or the failure of the Company to supply, free of charge, a copy of this Agreement as provided hereunder shall not affect the validity or enforcement of this Agreement.

7.13 Stock Splits, Stock Dividends, etc. In the event of any issuance of Shares or voting securities of the Company hereafter to any of the Stockholders (including, without limitation, in connection with any stock split, stock dividend, recapitalization, reorganization, or the like), such Shares shall become subject to this Agreement and shall be notated with the legend set forth in Subsection 7.12.

7.14 Manner of Voting. The voting of Shares pursuant to this Agreement may be effected in person, by proxy, by written consent or in any other manner permitted by applicable law. For the avoidance of doubt, voting of the Shares pursuant to the Agreement need not make explicit reference to the terms of this Agreement.

7.15 Further Assurances. At any time or from time to time after the date hereof, the parties agree to cooperate with each other, and at the request of any other party, to execute and deliver any further instruments or documents and to take all such further action as the other party may reasonably request in order to carry out the intent of the parties hereunder.

7.16 Dispute Resolution. The parties (a) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of Delaware and to the jurisdiction of the United States District Court for the District of Delaware for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (b) agree not to commence any suit, action or other proceeding arising out of or based upon this

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Agreement except in the state courts of Delaware or the United States District Court for the District of Delaware, and (c) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

WAIVER OF JURY TRIAL: EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS TRANSACTION, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

Each party will bear its own costs in respect of any disputes arising under this Agreement. The prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which such party may be entitled. Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in the U.S. District Court for the District of Delaware or any court of the State of Delaware having subject matter jurisdiction.

7.17 Aggregation of Stock. All Shares beneficially owned or acquired by a Stockholder and/or its Affiliates shall be aggregated together for the purpose of determining the availability of any rights under this Agreement, and such Affiliated persons may apportion such rights as among themselves in any manner they deem appropriate.

7.18 Spousal Consent. If any individual Stockholder is married on the date of this Agreement, such Stockholder's spouse shall execute and deliver to the Company a consent of spouse in the form of Exhibit B hereto ("**Consent of Spouse**"), effective on the date hereof. Notwithstanding the execution and delivery thereof, such consent shall not be deemed to confer or convey to the spouse any rights in such Stockholder's Shares that do not otherwise exist by operation of law or the agreement of the parties. If any individual Stockholder should marry or remarry subsequent to the date of this Agreement, such Stockholder shall within thirty (30) days thereafter obtain his/her new spouse's acknowledgement of and consent to the existence and binding effect of all restrictions contained in this Agreement by causing such spouse to execute and deliver a Consent of

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Spouse acknowledging the restrictions and obligations contained in this Agreement and agreeing and consenting to the same.

7.19 Failure to Fund. Notwithstanding any other provision in this Agreement, in the event an Investor fails to fund its obligations at any Supplemental Closing (as defined in the Purchase Agreement), Second Closing (as defined in the Purchase Agreement) or the Third Closing (as defined in the Purchase Agreement), all rights (but not obligations) of such Investor pursuant to this Agreement vis-à-vis such Investor's holdings of Series C Preferred Stock or Common Stock issuable upon conversion of Series C Preferred Stock shall be terminated and of no force or effect.

7.20 Voting Rights. Alcon shall not be permitted to exercise voting rights with respect to any shares of capital stock beneficially owned by Alcon that, in the aggregate, represent voting rights in excess of 19% of the Company's outstanding Common Stock on an as-converted basis (the "**Voting Threshold**") on any matter submitted to vote of all holders of capital stock of the Company. Instead, the Chief Financial Officer or the Chief Executive Officer of the Company then in office, each of them individually, with full power of substitution and resubstitution, shall exercise the voting rights with respect to such shares of capital stock in excess of the Voting Threshold in a Neutral Manner (the "**Voting Proxy**"). "**Neutral Manner**" means in the same proportion as the outstanding Series C Preferred Stock of the Company (excluding any and all capital stock of the Company owned, directly or indirectly, by Alcon) is voted on the relevant matters. For the avoidance of doubt, nothing contained herein shall limit Alcon's ability to vote all shares of capital stock beneficially owned by it on any matter submitted to the holders of Preferred Stock as a class, or any matter submitted to the holders of one or more series of Preferred Stock, voting together as a single class, whether or not such vote is calculated on an as-converted to Common Stock basis, including, without limitation, a vote of the Requisite Series C Holders (as such term may be amended after the date hereof). Alcon and each Investor hereby agree that the implementation of the Voting Proxy hereby satisfies any and all obligations of the Company and the Company's stockholders due under Section 6.15 "Accounting Treatment" of the Purchase Agreement, and that the Company and the Company's stockholders therefore have no remaining obligations to Alcon under such Section of the Purchase Agreement.

[Signature Page Follows]

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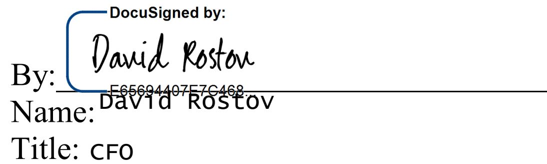
IN WITNESS WHEREOF, the parties have executed this Voting Agreement as of the date first written above.

COMPANY:

AURION BIOTECH, INC.



By:______________________________
Name: David Rostov
Title: CFO

INVESTORS:

DEERFIELD PRIVATE DESIGN FUND V, L.P.

By: Deerfield Mgmt V, L.P.
General Partner
By: J.E. Flynn Capital V, LLC
General Partner

By: ___________________________
Name: David J. Clark
Title: Authorized Signatory
Email:
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com; latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice) to: legalnotice@deerfield.com

DEERFIELD HEALTHCARE

IN WITNESS WHEREOF, the parties have executed this Voting Agreement as of the date first written above.

COMPANY:

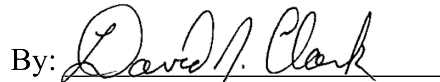
AURION BIOTECH, INC.

By:________________________________
Name:
Title:

INVESTORS:

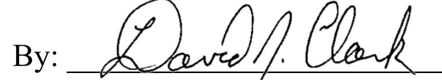
DEERFIELD PRIVATE DESIGN FUND V, L.P.

By: Deerfield Mgmt V, L.P.
General Partner
By: J.E. Flynn Capital V, LLC
General Partner

By: 
Name: David J. Clark
Title: Authorized Signatory
Email:
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com; latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice) to: legalnotice@deerfield.com

DEERFIELD HEALTHCARE INNOVATIONS FUND II, L.P.

By: Deerfield Mgmt HIF II, L.P.
General Partner
By: J.E. Flynn Capital HIF II, LLC
General Partner

By: 
Name: David J. Clark
Title: Authorized Signatory
Email:
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com; latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice) to: legalnotice@deerfield.com

ALCON RESEARCH, LLC

By:______________________________
Name: Laurent Attias
Title: SVP, Head of Corporate Strategy, BD&L and M&A
E-mail: laurent.attias@alcon.com
6201 South Freeway
Fort Worth, Texas 76134
Attn: Matthew Snakenberg and Tom Hudnall
Email: matthew.snakenberg@alcon.com and tom.hudnall@alcon.com (a copy of which shall not constitute notice)

FLYING L INVESTMENTS XV, LLC
By: Flying L Partners I, LLC
Its: Manager

By: _______________________
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com

INNOVATIONS FUND II, L.P.

By: Deerfield Mgmt HIF II, L.P.
General Partner
By: J.E. Flynn Capital HIF II, LLC
General Partner

By: ________________________
Name: David J. Clark
Title: Authorized Signatory
Email:
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com;
latinksy@deerfield.com
345 Park Avenue South
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New York, NY 10011
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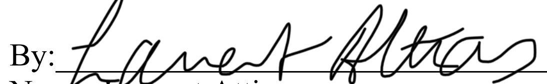
ALCON RESEARCH, LLC

By: 
Name: Laurent Attias
Title: SVP, Head of Corporate Strategy, BD&L
and M&A
E-mail: laurent.attias@alcon.com
6201 South Freeway
Fort Worth, Texas 76134
Attn: Matthew Snakenberg and Tom Hudnall
Email: matthew.snakenberg@alcon.com and
tom.hudnall@alcon.com (a copy of which shall
not constitute notice)

FLYING L INVESTMENTS XV, LLC
By: Flying L Partners I, LLC
Its: Manager

By: ________________________
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com

INNOVATIONS FUND II, L.P.

By: Deerfield Mgmt HIF II, L.P.
General Partner
By: J.E. Flynn Capital HIF II, LLC
General Partner

By: ________________________
Name: David J. Clark
Title: Authorized Signatory
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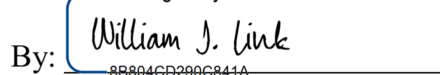
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com;
latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice)
to: legalnotice@deerfield.com

ALCON RESEARCH, LLC

By:________________________________
Name: Laurent Attias
Title: SVP, Head of Corporate Strategy, BD&L and M&A
E-mail: laurent.attias@alcon.com
6201 South Freeway
Fort Worth, Texas 76134
Attn: Matthew Snakenberg and Tom Hudnall
Email: matthew.snakenberg@alcon.com and tom.hudnall@alcon.com (a copy of which shall not constitute notice)

FLYING L INVESTMENTS XV, LLC
By: Flying L Partners I, LLC
Its: Manager

By: 

Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com

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Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

SIGHTLIFE I, LLC
By: Flying L Partners I, LLC
Its: Manager

DocuSigned by:
By: William J. Link
8B804CD290C841A...
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com
Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

SIGHTLIFE II, LLC
By: Flying L Partners I, LLC
Its: Manager

DocuSigned by:
By: William J. Link
8B804CD290C841A...
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com
Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

FALCON VISION LLC

By: ___________________________
Name: Ali Satvat
Title: Authorized Signatory
E-mail: Ali.Satvat@kkr.com
Address:
c/o Kohlberg Kravis Roberts & Co. L.P.
2800 Sandhill Road, Suite 200
Menlo Park, CA 94025

Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

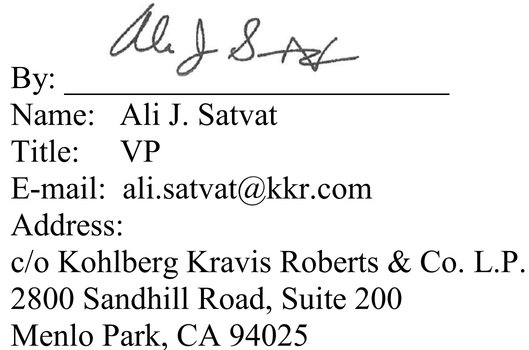
SIGHTLIFE I, LLC
By: Flying L Partners I, LLC
Its: Manager

By: ________________________
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com
Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

SIGHTLIFE II, LLC
By: Flying L Partners I, LLC
Its: Manager

By: ________________________
Name: William J. Link, Ph.D., Manager
Title: Managing Member
E-mail: bill@williamjlink.com
Address:
c/o Flying L Ventures
11 Linda Isle Newport Beach, CA
92660

FALCON VISION LLC



By: ________________________
Name: Ali J. Satvat
Title: VP
E-mail: ali.satvat@kkr.com
Address:
c/o Kohlberg Kravis Roberts & Co. L.P.
2800 Sandhill Road, Suite 200
Menlo Park, CA 94025

PETRICHOR OPPORTUNITIES FUND I LP

____
By: Petrichor Opportunities Fund I GP LLC
Its: General Partner

DocuSigned by:
By: Tadd Wessel
6A026BCF63BC447...
Name: Tadd Wessel
Title: Managing Member
E-mail: twessel@petrichorcap.com
Address:
c/o Petrichor Healthcare Capital Management
220 East 42nd Street, 37th Floor,
New York, NY 10017

PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP

____
By: Petrichor Opportunities Fund I GP LLC
Its: General Partner

DocuSigned by:
By: Tadd Wessel
6A026BCF63BC447...
Name: Tadd Wessel
Title: Managing Member
E-mail: twessel@petrichorcap.com
Address:
c/o Petrichor Healthcare Capital Management
220 East 42nd Street, 37th Floor,
New York, NY 10017

VISIONARY VENTURE FUND II, LP
By: Visionary Venture Fund II GP, LLC
Its: General Partner

By: VMP Investments, Inc.
Its: Managing Member

By:__________________________________
Name: Jeffry K. Weinhuff
Title: President
E-mail: jeff@visionaryvc.com

Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

VISIONARY VENTURE FUND II (QP), LP

By: Visionary Venture Fund II GP, LLC
Its: General Partner

By: VMP Investments, Inc.
Its: Managing Member

By: ______________________________
Name: Jeffry K. Weinhuff
Title: President
E-mail: jeff@visionaryvc.com
Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

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Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

VISIONARY VENTURE FUND II (QP), LP

By: Visionary Venture Fund II GP, LLC
Its: General Partner

By: VMP Investments, Inc.
Its: Managing Member

By:_______________________________
Name: Jeffry K. Weinhuff
Title: President
E-mail: jeff@visionaryvc.com
Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

DocuSign Envelope ID: D835C9A3-E0EF-48C2-B18C-4FA17D47FC84

SCHEDULE A

INVESTORS

Name and Address	**Number of Shares Beneficially owned**
FLYING L INVESTMENTS XV, LLC Address: c/o Flying L Ventures 11 Linda Isle Newport Beach, CA 92660	
SIGHTLIFE I, LLC Address: c/o Flying L Ventures 11 Linda Isle Newport Beach, CA 92660	
SIGHTLIFE II, LLC Address: c/o Flying L Ventures 11 Linda Isle Newport Beach, CA 92660	
FALCON VISION LLC Address: c/o Kohlberg Kravis Roberts & Co. L.P. 2800 Sandhill Road, Suite 200 Menlo Park, CA 94025	
PETRICHOR OPPORTUNITIES FUND I LP Address: c/o Petrichor Healthcare Capital Management 220 East 42nd Street, 37th Floor, New York, NY 10017	
PETRICHOR OPPORTUNITIES FUND I INTERMEDIATE LP Address: c/o Petrichor Healthcare Capital Management 220 East 42nd Street, 37th Floor, New York, NY 10017	

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VISIONARY VENTURE FUND II, LP
Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

VISIONARY VENTURE FUND II (QP), LP
Address:
610 Newport Center Dr. Suite 1250
Newport Beach, CA 92660

DEERFIELD PRIVATE DESIGN FUND V, L.P.
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com; latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice) to: legalnotice@deerfield.com

DEERFIELD HEALTHCARE INNOVATIONS FUND II, L.P.
Address:
Attn: Andrew ElBardissi & Lawrence Atinksy
Email: aelbardissi@deerfield.com; latinksy@deerfield.com
345 Park Avenue South
12th Floor
New York, NY 10011
With a copy (which shall not constitute notice) to: legalnotice@deerfield.com

ALCON RESEARCH, LLC
Address:
6201 South Freeway
Fort Worth, Texas 76134
Attn: Matthew Snakenberg and Tom Hudnall
Email: matthew.snakenberg@alcon.com and tom.hudnall@alcon.com (a copy of which shall not constitute notice)

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SCHEDULE B

KEY HOLDERS

Name and Address	Number of Shares Beneficially owned

EXHIBIT A

ADOPTION AGREEMENT

This Adoption Agreement ("**Adoption Agreement**") is executed on ___________________, 20__, by the undersigned (the "**Holder**") pursuant to the terms of that certain Voting Agreement dated as of [•] (the "**Agreement**"), by and among Aurion Biotech, Inc. (the "**Company**") and certain of its Stockholders, as such Agreement may be amended or amended and restated hereafter. Capitalized terms used but not defined in this Adoption Agreement shall have the respective meanings ascribed to such terms in the Agreement. By the execution of this Adoption Agreement, the Holder agrees as follows.

1.1 Acknowledgement. Holder acknowledges that Holder is acquiring certain shares of the capital stock of the Company (the "**Stock**") or options, warrants, or other rights to purchase such Stock (the "**Options**"), for one of the following reasons (Check the correct box):

☐ As a transferee of Shares from a party in such party's capacity as an "Investor" bound by the Agreement, and after such transfer, Holder shall be considered an "Investor" and a "Stockholder" for all purposes of the Agreement.

☐ As a transferee of Shares from a party in such party's capacity as a "Key Holder" bound by the Agreement, and after such transfer, Holder shall be considered a "Key Holder" and a "Stockholder" for all purposes of the Agreement.

☐ As a new Investor in accordance with Subsection 7.1(a) of the Agreement, in which case Holder will be an "Investor" and a "Stockholder" for all purposes of the Agreement.

☐ In accordance with Subsection 7.1(b) of the Agreement, as a new party who is not a new Investor, in which case Holder will be a "Stockholder" for all purposes of the Agreement.

1.2 Agreement. Holder hereby (a) agrees that the Stock [Options], and any other shares of capital stock or securities required by the Agreement to be bound thereby, shall be bound by and subject to the terms of the Agreement and (b) adopts the Agreement with the same force and effect as if Holder were originally a party thereto.

1.3 Notice. Any notice required or permitted by the Agreement shall be given to Holder at the address listed below Holder's signature hereto.

HOLDER: ________________________

By: ______________________________
Name and Title of Signatory

Address: __________________________

____

ACCEPTED AND AGREED:

COMPANY:
Aurion Biotech, Inc.

By: ___________________________________

Title: __________________________________

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EXHIBIT B

CONSENT OF SPOUSE

I, [____________________], spouse of [______________], acknowledge that I have read the Voting Agreement, dated as of [•], to which this Consent is attached as Exhibit B (the "**Agreement**"), and that I know the contents of the Agreement. I am aware that the Agreement contains provisions regarding the voting and transfer of shares of capital stock of Aurion Biotech, Inc. (the "**Company**") that my spouse may own, including any interest I might have therein.

I hereby agree that my interest, if any, in any shares of capital stock of the Company subject to the Agreement shall be irrevocably bound by the Agreement and further understand and agree that any community property interest I may have in such shares of capital stock of the Company shall be similarly bound by the Agreement.

I am aware that the legal, financial and related matters contained in the Agreement are complex and that I am free to seek independent professional guidance or counsel with respect to this Consent. I have either sought such guidance or counsel or determined after reviewing the Agreement carefully that I will waive such right.

Dated:_________________________

____
(Signature)

____
Print Name of Stockholder's Spouse

SUPPLEMENTAL INFORMATION PURSUANT TO RULE 3(A)
OF THE RULES OF THE COURT OF CHANCERY

The information contained herein is for the use by the Court for statistical and administrative purposes. Nothing in this document shall be deemed binding for purposes of the merits of the case.

1. Case caption: ***Deerfield Private Design Fund V, L.P. v. Alcon Research, LLC***

2. Date filed: **February 23, 2025**

3. Name and address of counsel for plaintiff(s): **David E. Ross (Bar No. 5228), Eric D. Selden (Bar No. 4911) and Elizabeth M. Taylor (Bar No. 6468), Ross Aronstam & Moritz LLP, Hercules Building, 1313 N. Market St., Suite 1001, Wilmington, Delaware 19801**

4. Short statement and nature of claim(s) asserted: **Action seeking to declare the purported appointment of a director and amendment of bylaws invalid pursuant to 8 *Del. C.* § 225 and seeking to declare a share purchase agreement invalid pursuant to 8 *Del. C.* § 111.**

5. Substantive field of law involved (check one):

____Administrative law	____Labor law	____Trusts, Wills and Estates
____ Commercial law	____Real Property	____Consent trust petitions
____Constitutional law	____348 Deed Restriction	____Partition
_X_ Corporation law	____Zoning	____Rapid Arbitration (Rules 96,97)
____Trade secrets/trade mark/or other intellectual property		____Other

6. Identify any related cases, including any Register of Wills matter. This question is intended to promote jurisdiction efficiency by assigning cases involving similar parties or issues to a single judicial officer. By signing this form, an attorney represents that the attorney has done reasonable diligence sufficient to respond to this question. ***Alcon Research, LLC v. Aurion Biotech, Inc.*****, C.A. No. 2024-1102-KSJM (Del. Ch.)**

7. State all bases for the court's exercise of subject matter jurisdiction by citing to the relevant statute. Specify if 8 *Del. C.* § 111, 6 *Del. C.* § 17-111, or 6 *Del. C.* § 18-111. State if the case seeks monetary relief, even if secondarily or in the alternative, under a merger agreement, asset purchase agreement, or equity purchase agreement. **8 *Del. C.* § 225; 8 *Del. C.* § 111.**

8. If the complaint initiates a summary proceeding under Sections 8 *Del. C.* §§ 145(k), 205, 211(c), 220, or comparable statutes, check here **X.** (If #8 is checked, you must either (i) file a motion to expedite with a proposed form of order identifying the schedule requested or (ii) submit a letter stating that you do not seek an expedited schedule and the reason(s)—e.g., you have filed to preserve standing and do not seek immediate relief.)

9. If the complaint is accompanied by a request for a temporary restraining order, a preliminary injunction, a status quo order, or expedited proceedings other than in a summary proceeding, check here **X**. (If #9 is checked, a motion to expedite must accompany the transaction with a proposed form of order identifying the schedule requested.)

10. If counsel believe that the case should not be assigned to a Magistrate in the first instance, check here and attach a statement of good cause. **X**

/s/ David E. Ross
David E. Ross (Bar No. 5228)

STATEMENT OF GOOD CAUSE

It is the opinion of counsel that this action should not be assigned to a Magistrate in the first instance. As set forth in the Verified Complaint, Plaintiffs bring complex corporate law claims regarding the validity of a purported appointment of a director, purported bylaws amendment, and purported stock purchase agreement. For these reasons, among others, counsel believes that this action should proceed directly before the Chancellor or a Vice Chancellor of this Court.

ROSS ARONSTAM & MORITZ LLP

/s/ David E. Ross

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February 23, 2025