

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934

Date of Report (date of earliest event reported): December 3, 2020

QSAM BIOSCIENCES, INC.

(Exact name of registrant as specified in its charter)

Delaware
(State or other jurisdiction
of incorporation)

000-55148
(Commission
File Number)

20-1602779
(IRS Employer
Identification Number)

420 Royal Palm Way, #100, Palm Beach, Florida
(Address of principal executive offices)

33480
(Zip Code)

Registrant's telephone number, including area code

(561) 693-1423

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On December 9, 2020, Tristan Peitz resigned as Director of the Company. The resignation was for personal reasons.

On December 30, 2020, the Company issued to its Chief Executive Officer, Executive Chairman, General Counsel, Vice President of Operations, and Senior Clinical Advisor, an aggregate of 7,650 shares of the Company's Series E-1 Incentive Preferred Stock (the "Series E-1 Preferred Shares"), pursuant to five separate Issuance Agreements. The shares of Series E-1 Preferred Stock vest between six months and two years from the date of issuance. Terms of the Series E-1 Preferred Shares are described in Item 5.3 below.

Item 5.03 Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year

The Company filed an amendment to its Articles of Incorporation to authorize the issuance of up to 8,500 shares of Series E-1 Preferred Stock on December 3, 2020 pursuant to a Certificate of Designation. The Series E-1 Preferred Shares are incentive-based vesting and forfeitable securities that provide the holders the right in the aggregate to receive an "earnout" equal to 20% of the total consideration received by the Company in the instance of a sale or sub-license of its core licensed radiopharmaceutical technology, or sale or merger of the Company, which is paid on a priority, senior basis. In addition, the holders of the Series E-1 Preferred Shares can convert their preferred stock at anytime or after an event leading to the earnout into an aggregate of 8.5 million common shares. The holders of the Series E-1 Preferred Stock have the right to vote along with the common stockholders based on the common conversion amount of their holdings, and have the right to nominate two members of the Board of Directors. Additional rights and protections with respect to approval of a sale of the Company or its assets, increasing the Board size, issuance of more senior securities and other typical preferred stock protections also are provided in the Certificate of Designation.

On December 29, 2020, the Company filed an amendment to its Articles of Incorporation to authorize the issuance of up to 2,500 shares of Series B Convertible Preferred

Stock (the "Series B Preferred Shares") pursuant to a Certificate of Designation. The Series B Preferred Shares are expected to be issued to accredited investors in connection with a private placement of up to \$2.5 million. The Series B Preferred Shares provide the holders a 10% annual PIK dividend, a liquidation preference equal to the par value of the shares (\$1,000 per share) followed by the right to participate with the common stockholders in the instance of a liquidation or other exit event, and provide the holders the right to vote along with the common holders based on the common conversion amount of their holdings. The Series B Preferred Shares are convertible into common stock at a price of \$0.16 per share, subject to anti-dilution protections in the case of certain issuances of securities below that conversion price. The Series B Preferred Shares are not redeemable.

The above represents a summary of the Series B Preferred Shares and the Series E-1 Preferred Shares and Issuance Agreement, and are qualified in their entirety by reference to the full documents filed as Exhibits 3.1, 3.2 and 10.1, respectively, to this Report on Form 8-K.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit Number</u>	<u>Description</u>
3.1	<u>Certificate of Designations for the Series B Convertible Preferred Stock</u>
3.2	<u>Certificate of Designation for the Series E-1 Incentive Preferred Stock</u>
10.1	<u>Form of Issuance Agreement for the Series E-1 Incentive Preferred Stock</u>

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

QSAM Biosciences, Inc.

By: /s/ Christopher Nelson

Christopher Nelson
General Counsel

Date: December 31, 2020

Exhibit Index

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**Certificate of Designation of
Series B Convertible Preferred Stock of
QSAM Biosciences, Inc.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware, QSAM Biosciences Inc. (f/k/a Q2 Earth, Inc.), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”) authorizes the issuance of up to 5,000,000 shares of preferred stock, par value \$0.001 per share, of the Corporation (“**Preferred Stock**”) in one or more series, and expressly authorizes the Board of Directors of the Corporation (the “**Board**”), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions, and limitations of the shares of such series; and

WHEREAS, it is the desire of the Board to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences, and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issue of a series of Preferred Stock and does hereby in this Certificate of Designation (the “**Certificate of Designation**”) establish and fix and herein state and express the designation, rights, preferences, powers, restrictions, and limitations of such series of Preferred Stock as follows:

1. Designation. There shall be a series of Preferred Stock that shall be designated as “Series B Convertible Preferred Stock” (the “**Series B Preferred Stock**”) and the number of Shares constituting such series shall be Two Thousand Five Hundred (2,500). The rights, preferences, powers, restrictions, and limitations of the Series B Preferred Stock shall be as set forth herein.

2. Defined Terms. For purposes hereof, the following terms shall have the following meanings:

“**Board**” has the meaning set forth in the Recitals.

“**Certificate of Designation**” has the meaning set forth in the Recitals.

“**Certificate of Incorporation**” has the meaning set forth in the Recitals.

“**Change of Control**” means (a) any sale, lease, or transfer or series of sales, leases or transfers of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries; (b) any sale, transfer, or issuance (or series of sales, transfers, or issuances) of capital stock by the Corporation or the holders of Common Stock (or other voting stock of the Corporation) that results in the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such sale, transfer, or issuance to own less than a majority of the voting power of the Corporation designate, or (c) any merger, consolidation, recapitalization, or reorganization of the Corporation with or into another Person (whether or not the Corporation is the surviving corporation) that results in the in holders of Common Stock (or other voting stock of the Corporation) immediately prior to such merger, consolidation, recapitalization, or reorganization to designate or elect a majority of the board of directors (or its equivalent) owning less than a majority of the voting power of the Corporation, resulting entity or its parent company.

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Corporation.

“**Common Stock Deemed Outstanding**” means, at any given time, the sum of (a) the number of shares of Common Stock actually outstanding at such time, plus (b) the number of shares of Common Stock issuable upon exercise of Options actually outstanding at such time, plus (c) the number of shares of Common Stock issuable upon conversion or exchange of Convertible Securities actually outstanding at such time (treating as actually outstanding any Convertible Securities issuable upon exercise of Options actually outstanding at such time), in each case, regardless of whether the Options or Convertible Securities are actually exercisable at such time; *provided*, that Common Stock Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly owned Subsidiaries.

“**Convertible Securities**” means any securities (directly or indirectly) convertible into or exchangeable for Common Stock but excluding Options.

“**Corporation**” has the meaning set forth in the Preamble.

“**Conversion Price**” has the meaning set forth in Section 8.1(a).

“**Conversion Shares**” means the shares of Common Stock or other capital stock of the Corporation then issuable upon conversion of the Series B Preferred Stock in accordance with the terms of Section 8.

“**Date of Issuance**” means, for any Share of Series Preferred Stock, the date on which the Corporation initially issues such Share (without regard to any subsequent transfer of such Share or reissuance of the certificate(s) representing such Share).

“**Deemed Liquidation**” has the meaning set forth in Section 5.1(b)

“**Dividend Payment Date**” has the meaning set forth in Section 4.1.

“**Excluded Issuances**” means any issuance or sale (or deemed issuance or sale in accordance with Section 8.6(d)) by the Corporation after the Date of Issuance of: (a) shares of Common Stock issued on the conversion of the Series B Preferred Stock; (b) shares of Common Stock (as such number of shares is equitably adjusted for subsequent stock splits, stock combinations, stock dividends, and recapitalizations) issued directly or upon the exercise of Options or other Convertible Securities to directors, officers, employees, or consultants of the Corporation in connection with their service as directors of the Corporation, their employment by the Corporation, or their retention as consultants by the Corporation, in each case authorized by the Board (including all such shares of Common Stock, Options and Convertible Securities outstanding prior to the Date of Issuance); (c) shares issuable pursuant the Company’s Management Equity Plan, or any shares of Common Stock issuable upon conversion thereof; or (d) shares of Common Stock issued upon the conversion or exercise of Options (other than Options covered by clause (b) above) or Convertible Securities issued prior to the Date of Issuance, provided that such securities are not amended after the date hereof to increase the number of shares of Common Stock issuable thereunder or to lower the exercise or conversion price thereof.

“**Junior Securities**” means, collectively, the Common Stock and any other class of securities that is specifically designated as junior to the Series B Preferred Stock.

“**Liquidation**” has the meaning set forth in Section 5.1(a).

“**Liquidation Value**” means, with respect to any Share on any given date, One Thousand Dollars (\$1,000) per Share (as adjusted for any stock splits, stock dividends, recapitalizations, or similar transaction with respect to the Series B Preferred Stock).

“**Management Equity Plan**” means the Series E-1 Incentive Preferred Stock Plan of the Corporation.

“**Options**” means any warrants or other rights or options to subscribe for or purchase Common Stock or Convertible Securities.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**Qualified Public Offering**” means the sale, in a firm commitment underwritten public offering pursuant to an effective registration statement under the Securities Act, of Common Stock of the Corporation having an aggregate offering value (net of underwriters’ discounts and selling commissions) of at least \$5,000,000 and a price per share of Common Stock of at least two times the original Conversion Price (appropriately adjusted for stock splits, stock dividends, combinations, recapitalizations, and the like), following which the Common Stock of the Corporation shall be listed on any national securities exchange registered with the Securities and Exchange Commission under Section 6(a) of the Securities Exchange Act of 1934, as amended.

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Series B Preferred Stock**” has the meaning set forth in Section 1.

“**Share**” means a share of Series B Preferred Stock.

“**Subsidiary**” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person.

3. Rank. With respect to payment of dividends and distribution of assets upon liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, all Shares of the Series B Preferred Stock shall rank senior to all Junior Securities.

4. Dividends.

4.1 Accrual and Payment of Dividends. From and after the Date of Issuance of any Share, dividends on such Share shall accrue, whether or not declared by the Board and whether or not there are funds legally available for the payment of dividends, in arrears at the rate of 10% per annum on the sum of the Liquidation Value thereof. All accrued dividends on any Share shall be paid in cash only when, as and if declared by the Board out of funds legally available therefor or upon a Liquidation of the Series B Preferred Stock in accordance with the provisions of Section 5. All accrued and accumulated dividends on the Shares shall be prior and in preference to any dividend on any Junior Securities and shall be fully declared and paid before any dividends are declared and paid, or any other distributions or redemptions are made, on any Junior Securities, other than to declare or pay any dividend or distribution payable on the Common Stock in shares of Common Stock.

4.2 Participating Dividends. Subject to Section 4.1, in addition to the dividends accruing on the Series B Preferred Stock pursuant to Section 4.1 hereof, if the Corporation declares or pays a dividend or distribution on the Common Stock, whether such dividend or distribution is payable in cash, securities or other property, including the purchase or redemption by the Corporation or any of its Subsidiaries of shares of Common Stock for cash, securities or property, but excluding (i) any dividend or distribution payable on the Common Stock in shares of Common Stock the Corporation, shall simultaneously declare and pay a dividend on the Series B Preferred Stock on a pro rata basis with the Common Stock determined on an as-converted basis assuming all Shares had been converted pursuant to Section 8 as of immediately prior to the record date of the applicable dividend (or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined).

4.3 Partial Dividend Payments. Except as otherwise provided herein, if at any time the Corporation pays less than the total amount of dividends then accrued and accumulated with respect to the Series B Preferred Stock, such payment shall be distributed pro rata among the holders thereof based upon the aggregate accrued and accumulated but unpaid dividends on the Shares held by each such holder.

5. Liquidation.

5.1 Liquidation: Deemed Liquidation.

(a) Liquidation. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation (collectively with a Deemed Liquidation, a “**Liquidation**”), the holders of Shares of Series B Preferred Stock then outstanding shall be entitled to be paid out of the assets of the Corporation available for distribution to its stockholders, before any payment shall be made to the holders of Junior Securities by reason of their ownership thereof, but subject to the Monetization Event Payout rights of the management team in the Management Equity Plan, an amount in cash equal to the aggregate Liquidation Value of all Shares held by such holder, plus all unpaid accrued and accumulated dividends on all such Shares (whether or not declared).

(b) Deemed Liquidation. The occurrence of a Change of Control (a “**Deemed Liquidation**”) shall be deemed a Liquidation for purposes of this Section 5. Upon the consummation of any such Deemed Liquidation, the holders of the Series B Preferred Stock shall, in consideration for cancellation of their Shares, be entitled to the same rights such holders are entitled to under this Section 5 upon the occurrence of a Liquidation, including the right to receive the full preferential payment from the Corporation of the amounts payable with respect to the Series B Preferred Stock under Section 5.1(a) hereof. Notwithstanding the foregoing, nothing in this Section 5.1(b) shall limit in any respect the right of any holder of Series B Preferred Stock to elect the benefits of either this Section 5 or Section 8.6(f) in connection with any Change of Control.

(c) Deemed Liquidation Procedures. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of Section 5.1(b), including, without limitation, (i) in the case of a Change of Control structured as a merger, consolidation, or similar reorganization, causing the definitive agreement relating to such transaction to provide for a rate at which the Shares of Series B Preferred Stock are converted into or exchanged for cash, new securities, or other property, or (ii) in the case of a Change of Control structured as an asset sale, as promptly as practicable following such transaction, either dissolving the Corporation and distributing the assets of the Corporation in accordance with applicable law or redeeming all outstanding Shares of Series B Preferred Stock and, in the case of both (i) and (ii), giving effect to the preferences and priorities set forth in Section 3 and Section 5. The Corporation shall promptly provide to the holders of Shares of Series B Preferred Stock such information concerning the terms of such Change of Control, and the value of the assets of the Corporation as may reasonably be requested by the holders of Series B Preferred Stock.

5.2 Participation With Junior Securities on Liquidation. In addition to and after payment in full of all preferential amounts required to be paid to the holders of Series B Preferred Stock upon a Liquidation under this Section 5 (including upon a Deemed Liquidation under Section 5.1(b)), the holders of Shares of Series B Preferred Stock then outstanding shall be entitled to participate with the holders of shares of Junior Securities then outstanding, pro rata as a single class based on the number of outstanding shares of Junior Securities on an as-converted basis held by each holder as of immediately prior to the Liquidation, in the distribution of all the remaining assets and funds of the Corporation available for distribution to its stockholders.

5.3 Insufficient Assets. If upon any Liquidation (or Deemed Liquidation) the remaining assets of the Corporation available for distribution to its stockholders shall be insufficient to pay the holders of the Shares of Series B Preferred Stock the full preferential amount to which they are entitled under Section 5.1, (a) the holders of the Shares shall share ratably in any distribution of the remaining assets and funds of the Corporation in proportion to the respective full preferential amounts which would otherwise be payable in respect of the Series B Preferred Stock in the aggregate upon such Liquidation (or Deemed Liquidation) if all amounts payable on or with respect to such Shares were paid in full, and (b) the Corporation shall not make or agree to make any payments to the holders of Junior Securities.

5.4 Notice.

(a) Notice Requirement. In the event of any Liquidation (or Deemed Liquidation), the Corporation shall, within ten (10) days of the date the Board approves such action, or no later than twenty (20) days of any stockholders' meeting called to approve such action, or within twenty (20) days of the commencement of any involuntary proceeding, whichever is earlier, give each holder of Shares of Series B Preferred Stock written notice of the proposed action. Such written notice shall describe the material terms and conditions of such proposed action, including a description of the stock, cash, and property to be received by the holders of Shares upon consummation of the proposed action and the date of delivery thereof. If any material change in the facts set forth in the initial notice shall occur, the Corporation shall promptly give written notice to each holder of Shares of such material change.

(b) Notice Waiting Period. The Corporation shall not consummate any voluntary Liquidation (or Deemed Liquidation) of the Corporation before the expiration of thirty (30) days after the mailing of the initial notice or ten (10) days after the mailing of any subsequent written notice, whichever is later; *provided*, that any such period may be shortened upon the written consent of the holders of all the outstanding Shares.

6. Voting.

6.1 Voting Generally. Each holder of outstanding Shares of Series B Preferred Stock shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law or by the provisions of Section 6.2 below. In any such vote, each Share of Series B Preferred Stock shall be entitled to a number of votes equal to the number of shares of Common Stock into which the Share is convertible pursuant to Section 8 herein as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent. Accrued dividends shall not be calculated in determining the number of shares entitled to vote in such meetings. Each holder of outstanding Shares of Series B Preferred Stock shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation's bylaws.

6.2 Intentionally Left Blank

6.3 Other Special Voting Rights. (i) Without the prior written consent of holders of not less than 66% of the then total outstanding Shares of Series B Preferred Stock (a "**Supermajority Interest**"), voting separately as a single class with one vote per Share, in person or by proxy, either in writing without a meeting or at an annual or a special meeting of such holders, and any other applicable stockholder approval requirements required by law, the Corporation shall not take, and shall cause its Subsidiaries not to take or consummate, any of the actions or transactions described in this Section 6.2 (any such action or transaction without such prior written consent being null and void *ab initio* and of no force or effect) as follows:

- (a) reclassify any outstanding shares of securities of the Corporation into shares having rights, preferences or privileges senior to or on parity with the Series B Preferred Stock, authorize or issue any equity security having rights or preferences senior to or on parity with the Series B Preferred Stock, or adversely alter or change the rights, preferences or privileges of the Series B Preferred Stock;
 - (b) amend, alter, modify, or repeal the Certificate of Incorporation, this Certificate of Designation, or the by-laws of the Corporation, including the amendment of the Certificate of Incorporation by the adoption or amendment of any Certificate of Designation or similar document, or amend the organizational documents of any Subsidiary;
 - (c) exclusively license all or substantially all of the Corporation's intellectual property in a single transaction or series of related transactions;
 - (d) redeem, purchase, or otherwise acquire or pay or declare any dividend or other distribution on (or pay into or set aside for a sinking fund for any such purpose) any capital stock of the Corporation; *provided*, that this restriction shall not apply to (i) the redemption or repurchase of or the payment of dividends on Shares of Series B Preferred Stock pursuant hereto, (ii) the declaration or payment of any dividend or distribution payable on the Common Stock in shares of Common Stock, or (iii) the repurchase of Junior Securities held by employees or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase at the lower of fair market value or cost;
-
- (e) declare bankruptcy, dissolve, liquidate, or wind up the affairs of the Corporation or any Subsidiary of the Corporation;
 - (f) acquire, or cause a Subsidiary of the Corporation to acquire, in any transaction or series of related transactions, the stock or any material assets of another Person, or enter into any joint venture with any other Person, or merge or consolidate with or into any other company.

7. Intentionally Left Blank.

8. Conversion.

8.1 Right to Convert; Automatic Conversion.

(a) Right to Convert. Subject to the provisions of this Section 8, at any time and from time to time on or after the Date of Issuance, any holder of Series B Preferred Stock shall have the right by written election to the Corporation to convert all or any portion of the outstanding Shares of Series B Preferred Stock held by such holder along with the aggregate accrued or accumulated and unpaid dividends thereon into an aggregate number of shares of Common Stock (including any fraction of a share) as is determined by (i) multiplying the number of Shares to be converted by the Liquidation Value thereof, (ii) adding to the result all accrued and accumulated and unpaid dividends on such Shares to be converted, and then (iii) dividing the result by the Conversion Price in effect immediately prior to such conversion. The initial conversion price shall be \$0.16 per Share (the "**Conversion Price**"), subject to adjustment as applicable in accordance with Section 8.6 below.

(b) Automatic Conversion. Subject to the provisions of this Section 8, in connection with, and on the closing of, a Qualified Public Offering by the Corporation, all of the outstanding Shares of Series B Preferred Stock (including any fraction of a Share) held by stockholders shall automatically convert along with the aggregate accrued or accumulated and unpaid dividends thereon into an aggregate number of shares of Common Stock as is determined by (i) multiplying the number of Shares to be converted by the Liquidation Value thereof, (ii) adding to the result all accrued and accumulated and unpaid dividends on such Shares to be converted, and then (iii) dividing the result by the applicable Conversion Price then in effect. If a closing of a Qualified Public Offering occurs, such automatic conversion of all of the outstanding Shares of Series B Preferred Stock shall be deemed to have been converted into shares of Common Stock as of immediately prior to such closing.

8.2 Procedures for Conversion; Effect of Conversion.

(a) Procedures for Holder Conversion. In order to effectuate a conversion of Shares of Series B Preferred Stock pursuant to Section 8.1(a), a holder shall (a) submit a written election to the Corporation that such holder elects to convert Shares, the number of Shares elected to be converted and (b) surrender, along with such written election, to the Corporation the certificate or certificates representing the Shares being converted, duly assigned or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or, in the event the certificate or certificates are lost, stolen, or missing, accompanied by an affidavit of loss executed by the holder. The conversion of such Shares hereunder shall be deemed effective as of the date of surrender of such Series B Preferred Stock certificate or certificates or delivery of such affidavit of loss. Upon the receipt by the Corporation of a written election and the surrender of such certificate(s) and accompanying materials, the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder (a) a certificate in such holder's name (or the name of such holder's designee as stated in the written election) for the number of shares of Common Stock (including any fractional share) to which such holder shall be entitled upon conversion of the applicable Shares as calculated pursuant to Section 8.1(a) and, if applicable (b) a certificate in such holder's (or the name of such holder's designee as stated in the written election) for the number of Shares of Series B Preferred Stock (including any fractional share) represented by the certificate or certificates delivered to the Corporation for conversion but otherwise not elected to be converted pursuant to the written election. All shares of capital stock issued hereunder by the Corporation shall be duly and validly issued, fully paid, and nonassessable, free and clear of all taxes, liens, charges, and encumbrances with respect to the issuance thereof.

(b) Procedures for Automatic Conversion. As of the closing of a Qualified Public Offering all outstanding Shares of Series B Preferred Stock shall be converted to the number of shares of Common Stock calculated pursuant to Section 8.1 without any further action by the relevant holder of such Shares or the Corporation. As promptly as practicable following such Qualified Public Offering (but in any event within five (5) days thereafter), the Corporation shall send each holder of Shares of Series B Preferred Stock written notice of such event. Upon receipt of such notice, each holder shall surrender to the Corporation the certificate or certificates representing the Shares being converted, duly assigned, or endorsed for transfer to the Corporation (or accompanied by duly executed stock powers relating thereto) or, in the event the certificate or certificates are lost, stolen, or missing, accompanied by an affidavit of loss executed by the holder. Upon the surrender of such certificate(s) and accompanying materials, the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) deliver to the relevant holder a certificate in such holder's name (or the name of such holder's designee as stated in the written election) for the number of shares of Common Stock (including any fractional share) to which such holder shall be entitled upon conversion of the applicable Shares. All shares of Common Stock issued hereunder by the Corporation shall be duly and validly issued, fully paid, and nonassessable, free and clear of all taxes, liens, charges, and encumbrances with respect to the issuance thereof.

(c) Effect of Conversion. All Shares of Series B Preferred Stock converted as provided in this Section 8.1 shall no longer be deemed outstanding as of the effective time of the applicable conversion and all rights with respect to such Shares shall immediately cease and terminate as of such time, other than the right of the holder to receive shares of Common Stock and payment in lieu of any fraction of a Share in exchange therefor.

8.3 Reservation of Stock. The Corporation shall at all times when any Shares of Series B Preferred Stock is outstanding reserve and keep available out of its authorized but unissued shares of capital stock, solely for the purpose of issuance upon the conversion of the Series B Preferred Stock, such number of shares of Common Stock issuable upon the conversion of all outstanding Series B Preferred Stock pursuant to this Section 8, taking into account any adjustment to such number of shares so issuable in accordance with Section 8 hereof. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not close its books against the transfer of any of its capital stock in any manner which would prevent the timely conversion of the Shares of Series B Preferred Stock.

8.4 No Charge or Payment. The issuance of certificates for shares of Common Stock upon conversion of Shares of Series B Preferred Stock pursuant to Section 8.1 shall be made without payment of additional consideration by, or other charge, cost, or tax to, the holder in respect thereof.

8.5 Intentionally Left Blank.

8.6 Adjustment to Conversion Price and Number of Conversion Shares. In order to prevent dilution of the conversion rights granted under this Section 8, the Conversion Price and the number of Conversion Shares issuable on conversion of the Shares of Series B Preferred Stock shall be subject to adjustment from time to time as provided in this Section 8.6.

(a) Adjustment to Conversion Price upon Issuance of Common Stock. Except as provided in Section 8.6(c) and except in the case of an event described in either Section 8.6(e) or Section 8.6(f), if the Corporation shall, at any time or from time to time after the Date of Issuance, issue or sell, or in accordance with Section 8.6(d) is deemed to have issued or sold, any shares of Common Stock without consideration or for consideration per share less than the Conversion Price in effect immediately prior to such issuance or sale (or deemed issuance or sale), then immediately upon such issuance or sale (or deemed issuance or sale), the Conversion Price in effect immediately prior to such issuance or sale (or deemed issuance or sale) shall be reduced (and in no event increased) to a Conversion Price equal to the quotient obtained by dividing:

(i) the sum of (A) the product obtained by multiplying the Common Stock Deemed Outstanding immediately prior to such issuance or sale (or deemed issuance or sale) by the Conversion Price then in effect plus (B) the aggregate consideration, if any, received by the Corporation upon such issuance or sale (or deemed issuance or sale); by

(ii) the sum of (A) the Common Stock Deemed Outstanding immediately prior to such issuance or sale (or deemed issuance or sale) plus (B) the aggregate number of shares of Common Stock issued or sold (or deemed issued or sold) by the Corporation in such issuance or sale (or deemed issuance or sale).

Whenever following the Date of Issuance, the Corporation shall issue or sell, or in accordance with Section 8.6(d) is deemed to have issued or sold, any shares of Common Stock, the Corporation shall prepare a certificate signed by an executive officer setting forth, in reasonable detail, the number of shares issued or sold, or deemed issued or sold, the amount and the form of the consideration received by the Corporation, and the method of computation of such amount and shall cause copies of such certificate to be mailed to the holders of record of Series B Preferred Stock at the address specified for such holder in the books and

records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder).

(b) Adjustment to Number of Conversion Shares upon Adjustment to Conversion Price. Upon any and each adjustment of the Conversion Price as provided in Section 8.6(a), the number of Conversion Shares issuable upon the conversion of the Series B Preferred Stock immediately prior to any such adjustment shall be increased to a number of Conversion Shares equal to the quotient obtained by dividing:

(i) the product of (A) the Conversion Price in effect immediately prior to any such adjustment multiplied by (B) the number of Conversion Shares issuable upon conversion of the Series B Preferred Stock immediately prior to any such adjustment; by

(ii) the Conversion Price resulting from such adjustment.

(c) Exceptions To Adjustment Upon Issuance of Common Stock. Anything herein to the contrary notwithstanding, there shall be no adjustment to the Conversion Price or the number of Conversion Shares issuable upon conversion of the Series B Preferred Stock with respect to any Excluded Issuance.

(d) Effect of Certain Events on Adjustment to Conversion Price. For purposes of determining the adjusted Conversion Price under Section 8.6(a) hereof, the following shall be applicable:

(i) Issuance of Options. If the Corporation shall, at any time or from time to time after the Date of Issuance, in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Options, whether or not such Options or the right to convert or exchange any Convertible Securities issuable upon the exercise of such Options are immediately exercisable, and the price per share (determined as provided in this paragraph and in Section 8.6(d)(v)) for which Common Stock is issuable upon the exercise of such Options or upon the conversion or exchange of Convertible Securities issuable upon the exercise of such Options is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Options, then the total maximum number of shares of Common Stock issuable upon the exercise of such Options or upon conversion or exchange of the total maximum amount of Convertible Securities issuable upon the exercise of such Options shall be deemed to have been issued as of the date of granting or sale of such Options (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price under Section 8.6(a)), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of Section 8.6(a)) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of all such Options, plus (y) the minimum aggregate amount of additional consideration payable to the Corporation upon the exercise of all such Options, plus (z), in the case of such Options which relate to Convertible Securities, the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the issuance or sale of all such Convertible Securities and the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the exercise of all such Options or upon the conversion or exchange of all Convertible Securities issuable upon the exercise of all such Options. Except as otherwise provided in Section 8.6(d)(iii), no further adjustment of the Conversion Price shall be made upon the actual issuance of Common Stock or of Convertible Securities upon exercise of such Options or upon the actual issuance of Common Stock upon conversion or exchange of Convertible Securities issuable upon exercise of such Options.

(ii) Issuance of Convertible Securities. If the Corporation shall, at any time or from time to time after the Date of Issuance, in any manner grant or sell (whether directly or by assumption in a merger or otherwise) any Convertible Securities, whether or not the right to convert or exchange any such Convertible Securities is immediately exercisable, and the price per share (determined as provided in this paragraph and in Section 8.6(d)(v)) for which Common Stock is issuable upon the conversion or exchange of such Convertible Securities is less than the Conversion Price in effect immediately prior to the time of the granting or sale of such Convertible Securities, then the total maximum number of shares of Common Stock issuable upon conversion or exchange of the total maximum amount of such Convertible Securities shall be deemed to have been issued as of the date of granting or sale of such Convertible Securities (and thereafter shall be deemed to be outstanding for purposes of adjusting the Conversion Price pursuant to Section 8.6(a)), at a price per share equal to the quotient obtained by dividing (A) the sum (which sum shall constitute the applicable consideration received for purposes of Section 8.6(a)) of (x) the total amount, if any, received or receivable by the Corporation as consideration for the granting or sale of such Convertible Securities, plus (y) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the conversion or exchange of all such Convertible Securities, by (B) the total maximum number of shares of Common Stock issuable upon the conversion or exchange of all such Convertible Securities. Except as otherwise provided in Section 8.6(d)(iii), (A) no further adjustment of the Conversion Price shall be made upon the actual issuance of Common Stock upon conversion or exchange of such Convertible Securities and (B) no further adjustment of the Conversion Price shall be made by reason of the issue or sale of Convertible Securities upon exercise of any Options to purchase any such Convertible Securities for which adjustments of the Conversion Price have been made pursuant to the other provisions of this Section 8.6(d).

(iii) Change in Terms of Options or Convertible Securities. Upon any change in any of (A) the total amount received or receivable by the Corporation as consideration for the granting or sale of any Options or Convertible Securities referred to in Section 8.6(d)(i) or Section 8.6(d)(ii) hereof, (B) the minimum aggregate amount of additional consideration, if any, payable to the Corporation upon the exercise of any Options or upon the issuance, conversion, or exchange of any Convertible Securities referred to in Section 8.6(d)(i) or Section 8.6(d)(ii) hereof, (C) the rate at which Convertible Securities referred to in Section 8.6(d)(i) or Section 8.6(d)(ii) hereof are convertible into or exchangeable for Common Stock, or (D) the maximum number of shares of Common Stock issuable in connection with any Options referred to in Section 8.6(d)(i) hereof or any Convertible Securities referred to in Section 8.6(d)(ii) hereof (in each case, other than in connection with an Excluded Issuance), then (whether or not the original issuance or sale of such Options or Convertible Securities resulted in an adjustment to the Conversion Price pursuant to this Section 8.6) the Conversion Price in effect at the time of such change shall be adjusted or readjusted, as applicable, to the Conversion Price which would have been in effect at such time pursuant to the provisions of this Section 8.6 had such Options or Convertible Securities still outstanding provided for such changed consideration, conversion rate, or maximum number of shares, as the case may be, at the time initially granted, issued, or sold, but only if as a result of such adjustment or readjustment the Conversion Price then in effect is reduced, and the number of Conversion Shares issuable upon the conversion of the Series B Preferred Stock immediately prior to any such adjustment or readjustment shall be correspondingly adjusted or readjusted pursuant to the provisions of Section 8.6(b).

(iv) Treatment of Expired or Terminated Options or Convertible Securities. Upon the expiration or termination of any unexercised Option (or portion thereof) or any unconverted or unexchanged Convertible Security (or portion thereof) for which any adjustment (either upon its original issuance or upon a revision of its terms) was made pursuant to this Section 8.6 (including without limitation upon the redemption or purchase for consideration of all or any portion of such Option or Convertible Security by the Corporation), the Conversion Price then in effect hereunder shall forthwith be changed pursuant to the provisions of this Section 8.6 to the Conversion Price which would have been in effect at the time of such expiration or termination had such unexercised Option (or portion thereof) or unconverted or unexchanged Convertible Security (or portion thereof), to the extent outstanding immediately prior to such expiration or termination, never been issued.

(v) Calculation of Consideration Received. If the Corporation shall, at any time or from time to time after the Date of Issuance, issue or sell, or is deemed to have issued or sold in accordance with Section 8.6(d), any shares of Common Stock, Options, or Convertible Securities: (A) for cash, the consideration received therefor shall be deemed to be the net amount received by the Corporation therefor; (B) for consideration other than cash, the amount of the consideration other than cash received by the Corporation shall be the fair value of such consideration, except where such consideration consists of

marketable securities, in which case the amount of consideration received by the Corporation shall be the market price (as reflected on any securities exchange, quotation system, or association or similar pricing system covering such security) for such securities as of the end of business on the date of receipt of such securities; (C) for no specifically allocated consideration in connection with an issuance or sale of other securities of the Corporation, together comprising one integrated transaction, the amount of the consideration therefor shall be deemed to be the fair value of such portion of the aggregate consideration received by the Corporation in such transaction as is attributable to such shares of Common Stock, Options, or Convertible Securities, as the case may be, issued in such transaction; or (D) to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation, the amount of consideration therefor shall be deemed to be the fair value of such portion of the net assets and business of the non-surviving entity as is attributable to such shares of Common Stock, Options, or Convertible Securities, as the case may be, issued to such owners. The net amount of any cash consideration and the fair value of any consideration other than cash or marketable securities shall be determined in good faith jointly by the Board.

(vi) Record Date. For purposes of any adjustment to the Conversion Price or the number of Conversion Shares in accordance with this Section 8.6, in case the Corporation shall take a record of the holders of its Common Stock for the purpose of entitling them (A) to receive a dividend or other distribution payable in Common Stock, Options, or Convertible Securities or (B) to subscribe for or purchase Common Stock, Options, or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(vii) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any of its wholly-owned subsidiaries, and the disposition of any such shares (other than the cancellation or retirement thereof or the transfer of such shares among the Corporation and its wholly-owned subsidiaries) shall be considered an issue or sale of Common Stock for the purpose of this Section 8.6.

(e) Adjustment to Conversion Price and Conversion Shares upon Dividend, Subdivision, or Combination of Common Stock. If the Corporation shall, at any time or from time to time after the Date of Issuance, (i) pay a dividend or make any other distribution upon the Common Stock or any other capital stock of the Corporation payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivide (by any stock split, recapitalization, or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to any such dividend, distribution, or subdivision shall be proportionately reduced and the number of Conversion Shares issuable upon conversion of the Series B Preferred Stock shall be proportionately increased. If the Corporation at any time combines (by combination, reverse stock split, or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination shall be proportionately increased and the number of Conversion Shares issuable upon conversion of the Series B Preferred Stock shall be proportionately decreased. Any adjustment under this Section 8.6(e) shall become effective at the close of business on the date the dividend, subdivision, or combination becomes effective.

(f) Adjustment to Conversion Price and Conversion Shares upon Reorganization, Reclassification, Consolidation, or Merger. In the event of any (i) capital reorganization of the Corporation, (ii) reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) consolidation or merger of the Corporation with or into another Person, (iv) sale of all or substantially all of the Corporation's assets to another Person or (v) other similar transaction (other than any such transaction covered by Section 8.6(e)), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities, or assets with respect to or in exchange for Common Stock, each Share of Series B Preferred Stock shall, immediately after such reorganization, reclassification, consolidation, merger, sale, or similar transaction, remain outstanding and shall thereafter, in lieu of or in addition to (as the case may be) the number of Conversion Shares then convertible for such Share, be exercisable for the kind and number of shares of stock or other securities or assets of the Corporation or of the successor Person resulting from such transaction to which such Share would have been entitled upon such reorganization, reclassification, consolidation, merger, sale, or similar transaction if the Share had been converted in full immediately prior to the time of such reorganization, reclassification, consolidation, merger, sale, or similar transaction and acquired the applicable number of Conversion Shares then issuable hereunder as a result of such conversion (without taking into account any limitations or restrictions on the convertibility of such Share, if any); and, in such case, appropriate adjustment (in form and substance satisfactory to the holder of such Share) shall be made with respect to such holder's rights under this Certificate of Designation to insure that the provisions of this Section 8 hereof shall thereafter be applicable, as nearly as possible, to the Series B Preferred Stock in relation to any shares of stock, securities, or assets thereafter acquirable upon conversion of Series B Preferred Stock (including, in the case of any consolidation, merger, sale, or similar transaction in which the successor or purchasing Person is other than the Corporation, an immediate adjustment in the Conversion Price to the value per share for the Common Stock reflected by the terms of such consolidation, merger, sale, or similar transaction, and a corresponding immediate adjustment to the number of Conversion Shares acquirable upon conversion of the Series B Preferred Stock without regard to any limitations or restrictions on conversion, if the value so reflected is less than the Conversion Price in effect immediately prior to such consolidation, merger, sale, or similar transaction). The provisions of this Section 8.6(f) shall similarly apply to successive reorganizations, reclassifications, consolidations, mergers, sales, or similar transactions. The Corporation shall not effect any such reorganization, reclassification, consolidation, merger, sale, or similar transaction unless, prior to the consummation thereof, the successor Person (if other than the Corporation) resulting from such reorganization, reclassification, consolidation, merger, sale, or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Certificate of Designation (in form and substance satisfactory to the holder of such Share), the obligation to deliver to the holders of Series B Preferred Stock such shares of stock, securities, or assets which, in accordance with the foregoing provisions, such holders shall be entitled to receive upon conversion of the Series B Preferred Stock. Notwithstanding anything to the contrary contained herein, with respect to any corporate event or other transaction contemplated by the provisions of this Section 8.6(f), each holder of Shares of Series B Preferred Stock shall have the right to elect prior to the consummation of such event or transaction, to give effect to the provisions of Section 5.1(b) (if applicable to such event or transaction) or Section 8 hereunder, instead of giving effect to the provisions contained in this Section 8.6(f) with respect to such holder's Series B Preferred Stock.

(g) Certain Events. If any event of the type contemplated by the provisions of this Section 8.6 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights, or other rights with equity features) occurs, then the Board shall make an appropriate adjustment in the Conversion Price and the number of Conversion Shares issuable upon conversion of Shares of Series B Preferred Stock so as to protect the rights of the holder of such Shares in a manner consistent with the provisions of this Section 8; *provided*, that no such adjustment pursuant to this Section 8.6 shall increase the Conversion Price or decrease the number of Conversion Shares issuable as otherwise determined pursuant to this Section 8.

(h) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the Conversion Price, but in any event not later than 10 days thereafter, the Corporation shall furnish to each holder of record of Series B Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Corporation of a written request by any holder of Series B Preferred Stock, but in any event not later than 10 days thereafter, the Corporation shall furnish to such holder a certificate of an executive officer certifying the Conversion

Price then in effect and the number of Conversion Shares or the amount, if any, of other shares of stock, securities, or assets then issuable to such holder upon conversion of the Shares of Series B Preferred Stock held by such holder.

(i) Notices. In the event:

(i) that 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 Series B Preferred Stock) for the purpose of entitling or enabling them to receive any dividend or other distribution, to vote at a meeting (or by written consent), 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

(ii) of any capital reorganization of the Corporation, any reclassification of the Common Stock of the Corporation, any consolidation or merger of the Corporation with or into another Person, or sale of all or substantially all of the Corporation's assets to another Person; then, and in each such case, the Corporation shall send or cause to be sent to each holder of record of Series B Preferred Stock at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) at least ten days prior to the applicable record date or the applicable expected effective date, as the case may be, for the event, a written notice specifying, as the case may be, (A) the record date for such dividend, distribution, meeting or consent, or other right or action, and a description of such dividend, distribution, or other right or action to be taken at such meeting or by written consent, or (B) the effective date on which such reorganization, reclassification, consolidation, merger, sale, dissolution, liquidation, or winding-up is proposed to take place, and the date, if any is to be fixed, as of which the books of the Corporation shall close or a record shall be taken with respect to which the holders of record of Common Stock (or such other capital stock or securities at the time issuable upon conversion of the Series B 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, sale, dissolution, liquidation, or winding-up, and the amount per share and character of such exchange applicable to the Series B Preferred Stock and the Conversion Shares

9. Intentionally left Blank

10. Reissuance of Series B Preferred Stock. Any Shares of Series B Preferred, converted, or otherwise acquired by the Corporation or any Subsidiary shall be cancelled and retired as authorized and issued shares of capital stock of the Corporation and no such Shares shall thereafter be reissued, sold, or transferred.

11. Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address as it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this Section 11).

12. Amendment and Waiver. No provision of this Certificate of Designation may be amended, modified, or waived except by an instrument in writing executed by the Corporation and a supermajority of the holders of the then outstanding shares as provided in Section 6.3, and any such written amendment, modification, or waiver will be binding upon the Corporation and each holder of Series B Preferred Stock; *provided*, that no such action shall change or waive (a) the definition of Liquidation Value, (b) the rate at which or the manner in which dividends on the Series B Preferred Stock accrue or accumulate or the times at which such dividends become payable pursuant to Section 4, or (c) this Section 12, without the prior written consent of each holder of outstanding Shares of Series B Preferred Stock; *provided, further*, that no amendment, modification, or waiver of the terms or relative priorities of the Series B Preferred Stock may be accomplished by the merger, consolidation, or other transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders in accordance with this Section 12.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation by its General Counsel this December 29, 2020.

QSAM BIOSCIENCES, INC.

By: /s/ Christopher Nelson
Christopher Nelson
Authorized Officer

**CERTIFICATE OF DESIGNATION OF
SERIES E-1 INCENTIVE PREFERRED STOCK OF QSAM BIOSCIENCES, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware, QSAM Biosciences, Inc. (f/k/a Q2Earth Inc.), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**Corporation**”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Amended Certificate of Incorporation of the Corporation (the “**Certificate of Incorporation**”) authorizes the issuance of up to 5,000,000 shares of preferred stock of the Corporation (“**Preferred Stock**”) in one or more series, and expressly authorizes the Board of Directors of the Corporation (the “**Board**”), subject to limitations prescribed by law, to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of Preferred Stock and the designation, rights, preferences, powers, restrictions, and limitations of the shares of such series; and

WHEREAS, it is the desire of the Board to encourage the Corporation to pursue the development of new technologies in biosciences, including pharmaceuticals for human health (“**New Technology**”), as more specifically defined in Section 2, to create stockholder value for the Corporation; and

WHEREAS, it is the desire of the Board to align the interest of management who possess the skills and expertise required to secure and advance New Technologies with the long-term interests of the stockholders of the Corporation; and

WHEREAS, it is the desire of the Board to establish and fix the number of shares to be included in a new series of Preferred Stock and the designation, rights, preferences, and limitations of the shares of such new series.

NOW, THEREFORE, BE IT RESOLVED, that the Board does hereby provide for the issue of a series of Preferred Stock and does hereby in this Certificate of Designation (the “**Certificate of Designation**”) establish and fix and herein state and express the designation, rights, preferences, powers, restrictions, and limitations of such series of Preferred Stock as follows:

Article I. **Designation.** There is hereby designated a series of Preferred Stock as the Series E-1 Incentive Preferred Stock (the “**Series E-1 Preferred Stock**”) and the number of Shares (as defined below) constituting such series shall be Eight Thousand Five Hundred (8,500). The rights, preferences, powers, restrictions, and limitations of the Series E-1 Preferred Stock shall be as set forth herein. The par value (the “**Par Value**”) of each Share is \$0.0001.

Article II. **Defined Terms.** For purposes hereof, the following terms shall have the following meanings:

“**Board**” has the meaning set forth in the Recitals.

“**Certificate of Designation**” has the meaning set forth in the Recitals.

“**Certificate of Incorporation**” has the meaning set forth in the Recitals.

“**Change of Control**” means (a) any sale or transfer or series of sales or transfers of all or substantially all of the consolidated assets of the Corporation and its Subsidiaries, in one transaction or a series of related transactions, other than pursuant to a Monetizing Event; (b) any sale, transfer, or issuance (or series of sales, transfers, or issuances), in one transaction or a series of related transactions, of capital stock by the Corporation or the holders of Common Stock (or other voting stock of the Corporation) that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such sale, transfer, or issuance to designate or elect a majority of the board of directors (or its equivalent) of the Corporation, other than the issuance of Preferred Stock or Common Stock authorized hereby; or (c) any merger, consolidation, recapitalization, or reorganization of the Corporation with or into another Person (whether or not the Corporation is the surviving corporation), in one transaction or a series of related transactions, that results in the inability of the holders of Common Stock (or other voting stock of the Corporation) immediately prior to such merger, consolidation, recapitalization, or reorganization to designate or elect a majority of the board of directors (or its equivalent) of the resulting entity or its parent company.

“**Common Stock**” means the common stock, par value \$0.0001 per share, of the Corporation.

“**Convertible Securities**” means any securities (directly or indirectly) convertible into or exchangeable for Common Stock but excluding Options.

“**Corporation**” has the meaning set forth in the Preamble.

“**Conversion Ratio**” has the meaning set forth in Section 7.1.

“**Conversion Shares**” means the shares of Common Stock or other capital stock of the Corporation then issuable upon conversion of the Shares in accordance with the terms of Section 7.

“**Date of Issuance**” means, for any Share, the date on which the Corporation initially issues such Share (without regard to any subsequent transfer or reissuance of such Share).

“**Issuance Agreement**” means the agreement provided to the holders of the Shares, and setting forth certain material terms related to the Milestones, Vesting and Forfeiture of the Shares, substantially in the form agreed to between the Corporation and the holders of Shares, and which agreement may be changed, supplemented, modified or altered without an amendment to this Certificate of Designation by approval of a majority of the Board with any Series E-1 Director abstaining.

“**Junior Securities**” means, collectively, the Common Stock and any other class of securities that is specifically designated by the Board of Directors as junior to the Series E-1 Preferred Stock subsequent to the filing of the Certificate of Designation. With respect to a Change of Control Event as provided in Section 5.3, the common stock, Series A Preferred Stock and Series B Preferred Stock shall be junior to the Series E-1 Preferred Stock.

“**Liquidation**” means a winding down of the Corporation, either voluntarily or involuntarily, after which event, the Corporation ceases to conduct business or hold assets.

“**Monetizing Event**” means the sale, transfer or licensing of the Corporation’s New Technology, either in one transaction or a series of transactions, whereby the Corporation receives value from an unaffiliated third party for such New Technology. For avoidance of doubt, a Monetizing Event is not *ipso facto* a Liquidation of the Corporation.

“**Monetizing Value**” means, with respect to all Shares authorized hereby in the aggregate, an amount equal to (i) twenty (20%) percent of the consideration received by the Corporation or its Subsidiary from, or payable to the stockholders of the Corporation or its Subsidiary in connection with, a Monetizing Event, either in one or more series of transactions, plus (ii) any accrued and unpaid dividends on the Shares; and with respect to one Share, a percentage of the total Monetizing Value determined by

dividing one Share by the total number of Shares authorized by the Certificate of Designation and assuming vesting of any Shares which have vested or which will vest in connection with the Monetizing Event.

“**New Technology**” means (i) pharmaceutical technology licensed by the Corporation’s Subsidiary, QSAM Therapeutics LLC (“**QSAM**”), pursuant to the New Technology License; (ii) any such additional technology licensed to the Corporation or a Subsidiary by virtue of QSAM exercising its right of first refusal under the New Technology License; or (iii) any New Technology improvements developed by the Corporation or a Subsidiary arising from the New Technology License.

“**New Technology License**” means QSAM’s Patent and Technology License Agreement and Trademark Assignment with IGL Pharma, Inc. (“**IGL**”) dated April 20, 2020, as may be amended by the parties from time to time in the future.

“**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.

“**Preferred Stock**” has the meaning set forth in the Recitals.

“**Securities Act**” means the Securities Act of 1933, as amended, or any successor federal statute, and the rules and regulations thereunder, which shall be in effect at the time.

“**Series E-1 Director**” has the meaning set forth in Section 6.2.

“**Series E-1 Preferred Stock**” has the meaning set forth in Section 1.

“**Share**” means a share of Series E-1 Preferred Stock.

“**Subsidiary**” means, with respect to any Person, any other Person of which a majority of the outstanding shares or other equity interests having the power to vote for directors or comparable managers are owned, directly or indirectly, by the first Person. For purposes hereof, QSAM is a Subsidiary.

Article III. **Rank.** With respect to payment of dividends and distribution of assets upon Liquidation, dissolution, or winding up of the Corporation, whether voluntary or involuntary, all Shares shall rank senior to all Junior Securities.

Article IV. **Dividends.** If the Corporation declares or pays a dividend or distribution on the Common Stock, whether such dividend or distribution is payable in cash, securities or other property, including the purchase or redemption by the Corporation or any of its Subsidiaries of shares of Common Stock for cash, securities or property, but excluding any repurchases of Common Stock held by employees or consultants of the Corporation upon termination of their employment or services pursuant to agreements providing for such repurchase, the Corporation shall simultaneously declare and pay a dividend on the Shares on a pro rata basis with the Common Stock determined on an as-converted basis assuming all vested Shares have been converted pursuant to Section 7 as of immediately prior to the record date of the applicable dividend (or if no record date is fixed, the date as of which the record holders of Common Stock entitled to such dividends are to be determined).

Article V. **Monetizing Event and Monetizing Value**

5.1 **Monetizing Event Payout.** In the event of a Monetizing Event, the holders of Shares then outstanding shall be entitled to be paid out of the net proceeds (i.e., amount received by the Corporation or a Subsidiary less any expenses, fees or other costs associated with transacting the Monetizing Event) to the Corporation or Subsidiary before any payment shall be made to the holders of Junior Securities by reason of their ownership thereof, an amount in cash equal to the aggregate Monetizing Value of all Shares held by such holder as if such Shares have all fully vested (a “**Monetizing Event Payout**”).

5.2 **Subsequent Monetizing Events.** Provided the Shares are still held by the holder, the Monetizing Event Payout described in Section 5.1 shall apply to: (i) all subsequent Monetizing Events prior to a Change in Control or Liquidation of the Corporation; and (ii) Monetizing Events which provide the Corporation with multiple payments, royalties or other deferred consideration prior to a Change in Control or Liquidation of the Corporation.

5.3 **Change of Control.** For the purposes of this Section 5, a Change of Control of the Corporation shall be considered a Monetizing Event and shall provide the holders of the Shares with the preferential payout rights afforded to them in a Monetizing Event described in Section 5.1, provided at least 50% of the value received in the Change of Control Event can be attributed to the New Technology, as determined by the Board of Directors, and if not unanimously agreed by the non Series E-1 Directors, then by an independent valuation firm chosen by a majority of the Directors. In the instance such attribution is less than 50%, the Monetizing Value shall be reduced proportionately with the value under 50% attributable to the New Technology. In furtherance of the foregoing, the Corporation shall take such actions as are necessary to give effect to the provisions of this Section 5.3, including, without limitation, (i) in the case of a Change of Control structured as a merger, consolidation, or similar reorganization, causing the definitive agreement relating to such transaction to provide for a rate at which the Shares are converted into or exchanged for cash, new securities, or other property, or (ii) in the case of a Change of Control structured as an asset sale, as promptly as practicable following such transaction, either dissolving the Corporation and distributing the assets of the Corporation in accordance with applicable law or redeeming all outstanding Shares and, in the case of both (i) and (ii), giving effect to the preferences and priorities set forth in Section 3 and Section 5. The Corporation shall promptly provide to the holders of Shares such information concerning the terms of such Change of Control, and the value of the assets of the Corporation as may reasonably be requested by the holders of Shares.

5.4 **Participation With Junior Securities on Change in Control.** Upon the consummation of any Change in Control, in addition to and after payment in full of all preferential amounts required to be paid to the holders of Shares upon a Monetizing Event, if applicable, the vested Shares then outstanding shall automatically be converted to Conversion Shares at the Conversion Ratio then applicable per the terms of Section 7, and thereby shall be entitled to participate with the holders of shares of Junior Securities then outstanding, pro rata as a single class based on the number of outstanding shares of Junior Securities on an as-converted basis held by each holder as of immediately prior to the Change in Control, in the distribution of all the remaining assets and funds of the Corporation available for distribution to its stockholders.

6 **Voting.**

6.1 **Voting Generally.** Each outstanding vested Share shall be entitled to vote with holders of outstanding shares of Common Stock, voting together as a single class, with respect to any and all matters presented to the stockholders of the Corporation for their action or consideration (whether at a meeting of stockholders of the Corporation, by written action of stockholders in lieu of a meeting or otherwise), except as provided by law or by the provisions of Section 6.3. In any such vote, each vested Share shall be entitled to a number of votes equal to the number of shares of Common Stock into which any vested Share is then convertible pursuant to Section 7 as of the record date for such vote or written consent or, if there is no specified record date, as of the date of such vote or written consent. Each holder of outstanding Shares shall be entitled to notice of all stockholder meetings (or requests for written consent) in accordance with the Corporation’s bylaws and applicable law.

6.2 Election of Directors. In any election of directors to the Corporation, for so long as the holders of outstanding Shares (and their permitted transferees) own in the aggregate at least 10% of the outstanding shares of Common Stock on a fully diluted, as-converted basis (as adjusted for any stock splits, stock dividends, recapitalizations or similar transaction) and assuming for purposes of this Section 6.2 all Shares issued and outstanding have vested, then holders of outstanding Shares, voting as a separate class, shall be entitled to elect by majority vote (with each Share entitled to one vote) two (2) individuals to the Board (each such individual, a “**Series E-1 Director**”). A Series E-1 Director may be removed at any time as a director on the Board (with or without cause) upon, and only upon, the written request of the holders of the outstanding Shares (voting as a separate class by majority vote with each Share entitled to one vote). In the event that a vacancy is created on the Board at any time due to the death, disability, retirement, resignation, or removal of a Series E-1 Director, then the holders of the outstanding Shares (voting as a separate class by majority vote with each Share of Series E-1 Preferred stock entitled to one vote) shall have the right to designate an individual to fill such vacancy. In the event that the holders of Shares shall fail to designate in writing a representative to fill the vacant Series E-1 Director seat on the Board, such Board seat shall remain vacant until such time as the holders of Shares elect an individual to fill such seat in accordance with this Section 6.2, and during any period where such seat remains vacant, the Board nonetheless shall be deemed duly constituted. The Company and the Board shall take such actions as required to increase the size of the Board such that the Series E-1 Directors may be added to the Board.

6.3 Other Special Voting Rights. Without the prior written consent of holders of not less than a majority of the then total outstanding Shares (a “**Majority Interest**”), voting separately as a single class with one vote per Share, in person or by proxy, either in writing without a meeting or at an annual or a special meeting of such holders, and any other applicable stockholder approval requirements required by law, and assuming for purposes of this Section 6.3 all Shares issued and outstanding have vested, the Corporation shall not take, and shall cause its Subsidiaries not to take or consummate, any of the actions or transactions described in this Section 6.3, and any such action or transaction without such prior written consent being null and void *ab initio* and of no force or effect:

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- (a) create, or authorize the creation of, any additional class or series of capital stock of the Corporation (or any security convertible into or exercisable for any class or series of capital stock of the Corporation), including any class or series of capital stock of the Corporation that ranks superior to or in parity with the Series E-1 Preferred Stock in rights, preferences or privileges (including with respect to dividends, liquidation, redemption or voting);
 - (b) other than as contemplated by this Certificate of Designation, amend, alter, modify, or repeal the Certificate of Incorporation, this Certificate of Designation, or the by-laws of the Corporation, including the amendment of the Certificate of Incorporation by the adoption or amendment of any Certificate of Designation or similar document, or amend the organizational documents of any Subsidiary;
 - (c) increase the authorized number of directors constituting the Board to a number greater than five (5); or
 - (d) sell, transfer, license or otherwise dispose of the New Technology, whether in a specific transaction or as part of a Change of Control event, unless such transaction is approved unanimously by the Board of Directors including the Series E-1 Directors.

7 Conversion

7.1 Conversion Ratio. Subject to the provisions of this Section 7 and any vesting and forfeiture provisions set forth in the holder’s Issuance Agreement, at any time and from time to time on or after vesting, a holder of Shares shall have the right by written election to the Corporation to convert all or any portion of the outstanding vested Shares held by such holder into an aggregate number of shares of Common Stock as is determined as follows (the “**Conversion Ratio**”): each Share shall be convertible into 1,000 shares of Common Stock. The Conversion Ratio is subject to adjustment as applicable in accordance with Section 7.5. The Conversion Shares shall be issued in book-entry form and no physical certificates for the Conversion Shares shall be issued.

7.2 Procedures for Conversion; Effect of Conversion.

- (a) Procedures for Holder Conversion. In order to effectuate a conversion of vested Shares pursuant to Section 7.1, a holder of Shares shall (a) submit a written election to the Corporation that such holder elects to convert Shares, the number of Shares elected to be converted and (b) execute such additional documents as reasonably required by the Corporation to effect such conversion (e.g., a stock power). The conversion of such vested Shares hereunder shall be deemed effective as of the date of the delivery of such executed conversion election together with any additional documents, executed by the holder. Upon the receipt by the Corporation of the documents set forth above, the Corporation shall as promptly as practicable (but in any event within ten (10) days thereafter) cause the Corporation’s transfer agent to record the applicable holder as the holder of the Conversion Shares in the books and records of the Corporation, and shall pay to the holder the cash value (as reasonably determined by the Board) of any fractional Conversion Shares resulting from such conversion. All shares of capital stock issued hereunder by the Corporation shall be duly and validly issued, fully paid, and nonassessable, free and clear of all taxes, liens, charges, and encumbrances with respect to the issuance thereof.

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- (b) Effect of Conversion. All Shares converted as provided in Section 5 or Section 7.2 shall no longer be deemed outstanding as of the effective time of the applicable conversion and all rights with respect to such Shares shall immediately cease and terminate as of such time (including, without limitation, any preferential distribution rights pursuant to Section 5 and voting rights pursuant to Section 6), other than the right of the holder to receive Conversion shares and payment in lieu of any fraction of a Share in exchange therefor.

- (c) Vesting and Conversion. For the avoidance of doubt, Shares may not be converted hereunder, whether electively or automatically, until such Shares have vested pursuant to the terms of the Holder’s Issuance Agreement, unless otherwise stated in this Certificate of Designation.

7.3 Reservation of Stock. The Corporation shall at all times when any Shares are outstanding reserve and keep available out of its authorized but unissued shares of Common Stock, solely for the purpose of issuance upon the conversion of the Shares, such number of shares of Common Stock issuable upon the conversion of all outstanding Shares pursuant to this Section 7 or Section 5, taking into account any adjustment to such number of shares so issuable in accordance with Section 7.5. The Corporation shall take all such actions as may be necessary to assure that all such shares of Common Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Common Stock may be listed (except for official notice of issuance which shall be immediately delivered by the Corporation upon each such issuance). The Corporation shall not close its books against the transfer of any of its capital stock in any manner which would prevent the timely conversion of the Shares.

7.4 No Charge or Payment. The issuance of Conversion Shares upon conversion of Shares pursuant to this Certificate of Designations shall be made without payment of additional consideration by, or other charge, cost, or tax to, the holder in respect thereof.

7.5 Adjustment to Conversion Ratio. In order to prevent dilution of the conversion rights granted under this Section 7, the Conversion Ratio to determine the number of Conversion Shares issuable on conversion of the Shares shall be subject to adjustment from time to time as provided in this Section 7.5.

(a) Adjustment to Conversion Ratio upon Dividend, Subdivision, or Combination of Common Stock. If the Corporation shall, at any time or from time to time after the Date of Issuance, (i) pay a dividend or make any other distribution upon the Common Stock or any other capital stock of the Corporation payable in shares of Common Stock or in Options or Convertible Securities, or (ii) subdivide (by any stock split, recapitalization, or otherwise) its outstanding shares of Common Stock into a greater number of shares, the Conversion Ratio in effect immediately prior to any such dividend, distribution, or subdivision shall be proportionately increased resulting in a proportionately greater number of Conversion Shares issuable upon conversion of the Shares. If the Corporation at any time combines (by combination, reverse stock split, or otherwise) its outstanding shares of Common Stock into a smaller number of shares, the Conversion Ratio in effect immediately prior to such combination shall be proportionately decreased resulting in a proportionately fewer number of Conversion Shares issuable upon conversion of the Shares. Any adjustment under this Section 7.5 shall become effective at the close of business on the date the dividend, subdivision, or combination becomes effective.

(b) Adjustment to Conversion Ratio upon Reorganization or Reclassification. To the extent that the following actions do not constitute a Change of Control under Section 5.3, in the event of any (i) capital reorganization of the Corporation, (ii) reclassification of the stock of the Corporation (other than a change in par value or from par value to no par value or from no par value to par value or as a result of a stock dividend or subdivision, split-up or combination of shares), (iii) other similar transaction (other than any such transaction covered by Section 7.5(a), in each case which entitles the holders of Common Stock to receive (either directly or upon subsequent liquidation) stock, securities, or assets with respect to or in exchange for Common Stock, each Share shall, immediately after such reorganization, reclassification, or similar transaction, remain outstanding and shall thereafter, in lieu of the number of Conversion Shares then convertible for such Share, be exercisable for the kind and number of shares of stock or other securities or assets of the Corporation or of the successor Person resulting from such transaction to which such Share would have been entitled upon such reorganization, reclassification, or similar transaction if the Share had been converted in full immediately prior to the time of such reorganization, reclassification, or similar transaction and acquired the applicable number of Conversion Shares then issuable hereunder as a result of such conversion (without taking into account any limitations or restrictions on the convertibility of such Share, if any); and, in such case, appropriate adjustment shall be made with respect to such holder's rights under this Certificate of Designation to insure that the provisions of this Section 7 shall thereafter be applicable, as nearly as possible, to the Shares in relation to any shares of stock, securities, or assets thereafter acquirable upon conversion of Shares. The provisions of this Section 7.5(b) shall similarly apply to successive reorganizations, reclassifications, or similar transactions. The Corporation shall not effect any such reorganization, reclassification, or similar transaction unless, at or before the time of the consummation thereof, the successor Person (if other than the Corporation) resulting from such reorganization, reclassification, or similar transaction, shall assume, by written instrument substantially similar in form and substance to this Certificate of Designation, the obligation to deliver to the holders of Shares such shares of stock, securities, or assets which, in accordance with the foregoing provisions, such holders shall be entitled to receive upon conversion of the Shares.

(c) Certificate as to Adjustment.

(i) As promptly as reasonably practicable following any adjustment of the Conversion Ratio, but in any event not later than 10 days thereafter, the Corporation shall furnish to each holder of record of Shares at the address specified for such holder in the books and records of the Corporation (or at such other address as may be provided to the Corporation in writing by such holder) a certificate of an executive officer setting forth in reasonable detail such adjustment and the facts upon which it is based and certifying the calculation thereof.

(ii) As promptly as reasonably practicable following the receipt by the Corporation of a written request by any holder of Shares, but in any event not later than 10 days thereafter, the Corporation shall furnish to such holder a certificate of an executive officer certifying the Conversion Ratio then in effect and the number of Conversion Shares or the amount, if any, of other shares of stock, securities, or assets then issuable to such holder upon conversion of the Shares held by such holder.

8 Forfeiture, Vesting and Repurchase. Any issuance of Shares shall be subject to forfeiture, vesting based on time, performance or other factors, and potential repurchase by the Corporation, all as set forth in the holder's Issuance Agreement.

9 Reissuance of Series E-1 Preferred Stock. Any Shares redeemed, converted, or otherwise acquired by the Corporation or any Subsidiary shall be cancelled and retired as authorized and issued shares of capital stock of the Corporation and no such Shares shall thereafter be reissued, sold, or transferred; provided however, the Corporation may reissue Shares that have been forfeited by a holder or repurchased from the holder pursuant to such holder's Issuance Agreement.

10 Notices. Except as otherwise provided herein, all notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent (a) to the Corporation, at its principal executive offices and (b) to any stockholder, at such holder's address at it appears in the stock records of the Corporation (or at such other address for a stockholder as shall be specified in a notice given in accordance with this Section 10).

11 Amendment and Waiver. No provision of this Certificate of Designation may be amended, modified, or waived except by an instrument in writing executed by the Corporation per the terms set forth herein, and any such written amendment, modification, or waiver will be binding upon the Corporation and each holder of Shares; *provided, further*, that no amendment, modification, or waiver of the terms or relative priorities of the Shares may be accomplished by the merger, consolidation, or other transaction of the Corporation with another corporation or entity unless the Corporation has obtained the prior written consent of the holders in accordance with this Section 11.

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation by its General Counsel this December 1, 2020.

QSAM Biosciences, Inc.

By: /s/ Christopher Nelson

Christopher Nelson
General Counsel

**FORM OF
QSAM BIOSCIENCES, INC.
SERIES E-1 INCENTIVE PREFERRED STOCK
ISSUANCE AGREEMENT**

Unless otherwise defined in this Issuance Agreement (the “*Agreement*”), the terms used herein shall have the meanings as set forth in the QSAM Biosciences, Inc. (the “*Company*”) Certificate of Designation for the Series E-1 Incentive Preferred Stock (the “*Certificate of Designation*”).

Article I. NOTICE OF SERIES E-1 PREFERRED STOCK GRANT

You have been issued Shares, subject to the terms and conditions of the Certificate of Designation and this Agreement, as follows:

Participant Name:

Date of Issuance:

Number of Shares:

Vesting Schedule:

Article II. GENERAL TERMS OF GRANT

Section 2.01 Issuance. The Company hereby issues to the individual named in the Notice of Grant in Article I (the “*Participant*”) under the Certificate of Designation, subject to all of the terms and conditions in this Agreement and the Certificate of Designation, which is incorporated herein by reference, the number of Shares as set forth in Article I, which are subject to vesting and forfeiture as set forth herein. In the event of a conflict between the terms and conditions of the Certificate of Designation and the terms and conditions of this Agreement, the terms and conditions of the Certificate of Designation will prevail.

Section 2.02 Vesting Schedule. The Participant understands that the rights provided to the holders of Shares shall vest per the schedule provided in Article I hereof. The Participant further understands that the Shares are subject to a risk of forfeiture, as set forth in Section 2.03.

Section 2.03 Forfeiture

- (a) **Termination for Cause.** If (i) the Participant’s employment or engagement with the Company is terminated by the Company “for cause”, as defined in the Participant’s employment agreement with the Company or (ii) Participant is removed from the Board of Directors by a majority vote of the Shares for reasons that would reasonably constitute “cause” under an employment arrangement, or (iii) materially breaches any consulting or services agreement under which any Shares have been issued or promised to such Participant, then in any such instance, the Company may repurchase all Shares from the Participant for their aggregate Par Value.
 - (b) **Termination without Cause.** If (i) the Participant’s employment or engagement with the Company is terminated without “cause”, as defined in the Participant’s employment agreement with the Company, or (ii) Participant is removed from the Board of Directors by a majority vote of the Shares for reasons that would not reasonably constitute “cause” under an employment arrangement, such Participant’s vested Shares shall be retained by the Participant for a period of two (2) years, and upon the two year anniversary of termination, shall then immediately and automatically convert into Common Stock at the Conversion Ratio then in effect per the terms of Section 7 of the Certificate of Designation.
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- (c) **Termination for Good Reason or Material Change.** If (i) the Participant’s employment or engagement with the Company is terminated by the Participant for “good reason” or after a “material change”, as defined in the Participant’s employment agreement with the Company or (ii) Participant resigns from the Board of Directors for “good reason” or after a “material change”, then in any such instance, such Participant’s Shares shall be retained by the Participant for a period of two (2) years, and upon the two year anniversary of termination, shall then immediately and automatically vest and convert into Common Stock at the Conversion Ratio then in effect per the terms of Section 7 of the Certificate of Designation.
 - (d) **Termination Without Good Reason.** If (i) the Participant’s employment or engagement with the Company is terminated by the Participant without “good reason”, as defined in the Participant’s employment agreement with the Company or (ii) Participant resigns from the Board of Directors without “good reason” then in any such instance, such Participant’s vested Shares shall immediately and automatically convert into Common Stock at the Conversion Ratio then in effect per the terms of Section 7 of the Certificate of Designation.
 - (e) **Failure to Extend Employment Agreement or Board Appointment.** If (i) the Participant’s employment or engagement with the Company is not extended beyond the initial term or an renewals thereof, as defined in the Participant’s employment agreement with the Company or (ii) Participant is not elected to continue to serve on the Board of Directors by a vote of the stockholders, then in any such instance, such Participant’s Shares shall be retained by the Participant for a period of one (1) year, and upon the one year anniversary of termination, shall then immediately and automatically vest and convert into Common Stock at the Conversion Ratio then in effect per the terms of Section 7 of the Certificate of Designation.
 - (f) **Death or Disability.** If the Participant’s employment or engagement with the Company is terminated due to the Participant’s death or disability, then in any such instance, such Participant’s Shares shall immediately and automatically vest and convert into Common Stock at the Conversion Ratio then in effect per the terms of Section 7 of the Certificate of Designation.

Section 2.04 Withholding of Taxes. Regardless of any action the Company takes with respect to any or all applicable national, local, or other tax or social contribution, withholding, required deductions, or other payments, if any, that arise upon the issuance or vesting of the Shares or the holding or subsequent sale of Shares, and the receipt of dividends, if any (“*Tax-Related Items*”), Participant acknowledges and agrees that the ultimate liability for all Tax-Related Items legally due by Participant is and remains Participant’s responsibility and may exceed the amount actually withheld by the Company. Participant further acknowledges that the Company (a) makes no representations or undertakings regarding the treatment of any Tax-Related Items in connection with any aspect of the Shares, including grant or vesting, the subsequent sale of Shares acquired, and the receipt of dividends, if any; and (b) does not commit to and is under no obligation to structure the terms of the Shares to reduce or eliminate Participant’s liability for Tax-Related Items, or achieve any particular tax result. Further, if Participant has become subject to tax in more than one jurisdiction between the date of grant and the date of any relevant taxable event, Participant acknowledges that the Company may be required to withhold or account for Tax-Related Items in more than one jurisdiction.

Section 2.05 No Guarantee of Continued Service. PARTICIPANT ACKNOWLEDGES AND AGREES THAT THE VESTING OF THE SHARES PURSUANT TO THE VESTING SCHEDULE HEREOF IS EARNED ONLY IN ACCORDANCE WITH THE PROVISIONS HEREIN AND NOT THROUGH THE ACT OF BEING HIRED, BEING ISSUED THE SHARES OR OTHERWISE ACQUIRING SHARES HEREUNDER. PARTICIPANT FURTHER ACKNOWLEDGES AND AGREES THAT THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREUNDER AND THE VESTING SCHEDULE SET FORTH HEREIN DO NOT CONSTITUTE AN EXPRESS OR IMPLIED PROMISE OF CONTINUED EMPLOYMENT OR ENGAGEMENT AS AN EMPLOYEE OR SERVICE PROVIDER FOR THE VESTING

PERIOD, FOR ANY PERIOD, OR AT ALL, AND WILL NOT INTERFERE IN ANY WAY WITH PARTICIPANT'S RIGHT OR THE RIGHT OF THE COMPANY (OR THE PARENT OR SUBSIDIARY EMPLOYING OR RETAINING PARTICIPANT) TO TERMINATE PARTICIPANT'S RELATIONSHIP AS AN EMPLOYEE OR SERVICE PROVIDER AT ANY TIME, WITH OR WITHOUT CAUSE.

Section 2.06 Shares are Not Transferable. The Shares and the rights and privileges conferred hereby will not prior to conversion to Common Stock be transferred, assigned, pledged or hypothecated in any way (whether by operation of law or otherwise) and will not be subject to sale under execution, attachment or similar process; provided however, the Shares may be transferred to a trust or estate controlled by the Participant. Upon any attempt to transfer, assign, pledge, hypothecate or otherwise dispose of the Shares prior to conversion to Common Stock, or any right or privilege conferred hereby, or upon any attempted sale under any execution, attachment or similar process, this issuance and the rights and privileges conferred hereby immediately will become null and void.

Section 2.07 Additional Conditions to Issuance of Stock. If at any time the Company will determine, in its discretion, that the listing, registration or qualification of the Shares upon any securities exchange or under any state or federal law, or the consent or approval of any governmental regulatory authority is necessary or desirable as a condition to the issuance of Shares to Participant (or his or her estate), such issuance will not occur unless and until such listing, registration, qualification, consent or approval will have been effected or obtained free of any conditions not acceptable to the Company. Where the Company determines that the delivery of the payment of any Shares will violate federal securities laws or other applicable laws, the Company will defer delivery until the earliest date at which the Company reasonably anticipates that the delivery of Shares will no longer cause such violation. The Company will make all reasonable efforts to meet the requirements of any such state or federal law or securities exchange and to obtain any such consent or approval of any such governmental authority. The Company shall not be obligated to issue any Shares pursuant to the Certificate of Designation at any time if the issuance of Shares violates or is not in compliance with any laws, rules or regulations of the United States or any state or country.

Section 2.08 Lock-Up Agreement. In connection with a public offering and up-listing to NASDAQ or NYSE of the Company's securities, Participant hereby agrees not to offer, pledge, sell, contract to sell, make any short sale of, loan, grant any option for the purchase of, or otherwise dispose of any securities of the Company however and whenever acquired (other than those included in the registration) without the prior written consent of the Company and the managing underwriters for such offering for such period of time (not to exceed 180 days) from the effective date of such registration as may be requested by the Company or such managing underwriters and to execute an agreement reflecting the foregoing as may be requested by the underwriters at the time of the Company's initial public offering. In addition, upon request of the Company or the underwriters managing a public offering of the Company's securities (other than the initial public offering), Participant hereby agrees to be bound by similar restrictions, and to sign a similar agreement, in connection with no more than one additional registration statement filed within 12 months after the closing date of the initial public offering, provided that the duration of the lock-up period with respect to such additional registration shall not exceed 90 days from the effective date of such additional registration statement. Notwithstanding the foregoing, if during the last 17 days of the restricted period, the Company issues an earnings release or material news or a material event relating to the Company occurs, or prior to the expiration of the restricted period the Company announces that it will release earnings results during the 16-day period beginning on the last day of the restricted period, then, upon the request of the managing underwriter, to the extent required by any FINRA rules, the restrictions imposed by this Section 2.07 shall continue to apply until the end of the third trading day following the expiration of the 15-day period beginning on the issuance of the earnings release or the occurrence of the material news or material event. In no event will the restricted period extend beyond 216 days after the effective date of the registration statement. In order to enforce the restriction set forth above, the Company may impose stop-transfer instructions with respect to the Shares acquired under this Agreement until the end of the applicable stand-off period. The Company's underwriters shall be beneficiaries of the agreement set forth in this Section 2.08.

If the underwriters release or waive any of the foregoing restrictions in connection with a transfer of shares of Common Stock, the underwriters shall notify the Company at least three business days before the effective date of any such release or waiver. Further, the Company will announce the impending release or waiver by press release through a major news service at least two business days before the effective date of the release or waiver. Any release or waiver granted by the underwriters shall only be effective two business days after the publication date of such press release. The provisions of this paragraph will not apply if (x) the release or waiver is effected solely to permit a transfer not for consideration and (y) the transferee has agreed in writing to be bound by the same terms of the lock-up provisions applicable in general to the extent, and for the duration, that such lock-up provision remain in effect at the time of the transfer.

Section 2.09 Administrator Authority. Unless an independent committee is constituted by the Board of Directors, the Board of Directors will have the power to interpret the Certificate of Designation and this Agreement and to adopt such rules for the administration, interpretation and application as are consistent therewith and to interpret or revoke any such rules (including, but not limited to, the determination of whether or not any Shares have vested). All actions taken and all interpretations and determinations made by the Board of Directors or independent committee, as the case may be, in good faith will be final and binding upon Participant, the Company and all other interested persons. No member of the Board of Directors or independent committee, as the case may be, will be personally liable for any action, determination or interpretation made in good faith with respect to the Certificate of Designation or this Agreement.

Section 2.10 Captions. Captions provided herein are for convenience only and are not to serve as a basis for interpretation or construction of this Agreement.

Section 2.11 Agreement Severable. In the event that any provision in this Agreement will be held invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement.

Section 2.12 Modifications to the Agreement. This Agreement and the Certificate of Designation constitute the entire understanding of the parties on the subjects covered. Participant expressly warrants that he or she is not accepting this Agreement in reliance on any promises, representations, or inducements other than those contained herein and in the Certificate of Designation. Modifications to this Agreement can be made only in an express written contract executed by a duly authorized officer of the Company and the Participant. Notwithstanding anything to the contrary in the Certificate of Designation or this Agreement, the Company reserves the right to revise this Agreement as it deems necessary or advisable, in its sole discretion and without the consent of Participant, to comply with Section 409A or to otherwise avoid imposition of any additional tax or income recognition under Section 409A in connection to this Agreement.

Section 2.13 Governing Law. This Agreement will be governed by the laws of the State of Delaware, without giving effect to the conflict of law principles thereof. For purposes of litigating any dispute that arises under this Agreement, the parties hereby submit to and consent to the jurisdiction of the State of Texas.

Section 2.14 Qualified Small Business Stock. As of and immediately following the date of the Agreement, (i) the Company is an eligible corporation as defined in Section 1202(e)(4) of the Code; (ii) the Company will not have made any purchases of its own stock during the one-year period preceding the Closing having an aggregate value exceeding 5% of the aggregate value of all its stock as of the beginning of such period; (iii) the Company's aggregate gross assets, as defined by Code Section 1202(d)(2), have never exceeded and, after taking into account the proceeds from the sale of the Seed financing, will not exceed \$50 million, taking into account the assets of any corporations required to be aggregated with the Company in accordance with Code Section 1202(d)(3); (iv) the Company will be a qualified small business within the meaning of Section 1202(e)(3) of the Code; and (v) the Company will be in compliance with the active business requirement of Section 1202(e) of the Code.

[Signatures of following page]

Signature

By:

Print Name

Title

Residence Address:
