

**SWGGR MEDIA, INC.**  
**FLASH SEED PREFERRED STOCK SUBSCRIPTION AGREEMENT**

THIS FLASH SEED PREFERRED STOCK SUBSCRIPTION AGREEMENT (this “**Agreement**”) is made as of the date set forth on the signature page below, by and between Swggr Media, Inc., a Delaware corporation (the “**Company**”), and \_\_\_\_\_ (“**Investor**”).

**RECITALS**

**A.** The Company has authorized the offer, sale and issuance of up to an aggregate of 317,258 shares of its Flash Seed Preferred Stock (the “**Flash Preferred**”), to be sold to certain purchasers acceptable to the Company at any time prior to the Offering End Date (as defined below) (the “**Offering**”), which Offering is being conducted, in whole or in part, through the FlashFunders™ online platform located at www.flashfunders.com (the “**Platform**”) operated by FlashFunders, Inc. (collectively, with its subsidiaries and affiliates, “**FlashFunders**”);

**B.** The Flash Preferred has the rights, preferences, privileges and restrictions set forth in the Amended and Restated Certificate of Incorporation of the Company, in the form attached to this Agreement as Exhibit A (the “**Charter**”);

**C.** Investor desires to purchase shares of Flash Preferred on the terms set forth in this Agreement; and

**D.** This Agreement is entered into as part of a series of similar agreements (collectively with this Agreement, the “**Subscription Agreements**”) pursuant to which the Company will sell and issue the Flash Preferred to the persons or entities listed on the signature pages of such Subscription Agreements (collectively with Investor, the “**Flash Investors**”).

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises, representations, warranties, and covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**1. Defined Terms.** As used in this Agreement, the following terms shall have the meanings set forth below:

(a) “**Common Stock**” means the Common Stock of the Company

(b) “**Incentive Pool Shares**” means a total of 132,349 shares of Common Stock authorized for issuance to employees, consultants and directors pursuant to one or more equity incentive plans that are either currently adopted or to be adopted as soon as practicable following the Initial Closing

(c) “**Minimum Amount**” means \$40,000.

(d) “**Offering End Date**” means August 21, 2015.

(e) “**Purchase Price**” means \$1.576 per Share.

(f) “**Shares**” means the \_\_\_\_\_ shares of Flash Preferred subscribed for by Investor pursuant to this Agreement.

## **2. Subscription and Acceptance; Closing.**

(a) Subject to the terms and conditions hereof, Investor hereby irrevocably subscribes for and agrees to purchase from the Company the Shares at the Purchase Price. The Investor agrees that this subscription shall be irrevocable and shall survive the death or disability of the Investor (if a natural person). The Investor understands that if this subscription is not accepted, in whole or in part, funds received by the Company pursuant hereto will be returned to the Investor, without interest accrued thereon.

(b) The Investor acknowledges that the Company has the right to accept or reject this subscription, in whole or in part, for any reason, and that this subscription shall be deemed to be accepted by the Company only when this Agreement is countersigned on the Company’s behalf. The subscription under this Agreement either will be accepted or rejected, in whole or in part, as promptly as practicable after receipt and occurrence of the Initial Closing (defined below). Upon rejection of the subscription under this Agreement for any reason, any and all funds received with this Agreement shall be returned to the Investor without deduction for any fee, commission or expense, and without accrued interest with respect to any money received, and this Agreement shall be deemed to be null and void and of no further force or effect. This subscription shall not be deemed to have been accepted by the Company until accepted by the Company as evidenced by its signature hereto.

(c) The initial closing of the sale and purchase of Flash Preferred pursuant to the Subscription Agreements (the “**Initial Closing**”) is conditioned upon the Company having received and accepting at the Initial Closing aggregate subscriptions from Flash Investors for shares of Flash Preferred having a total Purchase Price of at least the Minimum Amount, and receipt of the Purchase Price for such subscriptions in cleared funds into the Escrow Account, in each case on or prior to the Offering End Date. Funds for Purchase Price will be held in an escrow account established by the Company through the Platform and released to the Company at the discretion of the Company upon satisfaction of the conditions to the Initial Closing and subject to the terms and conditions of the Escrow Agreement relating to such escrow account (the “**Escrow Account**”), this Agreement and the Platform standard Terms of Use.

(d) The issuance of the Shares shall take place upon acceptance of the subscription provided for in this Agreement by the Company at any time on or after the Initial Closing (the date on which the Shares are issued shall be referred to herein as the “**Closing Date**”).

(e) At or prior to the Closing Date, the Investor shall deliver to the Company the Purchase Price by (a) wire transfer or other electronic funds transfer in accordance with the Company’s instructions as provided in the FlashFunders Platform, (b) cancellation of indebtedness if agreed to in advance by the Company, or (c) any combination of the foregoing.

In the event that payment by Investor is made, in whole or in part, by cancellation of indebtedness, then Investor shall surrender to the Company for cancellation at the Closing Date any evidence of indebtedness or shall execute an instrument of cancellation in form and substance acceptable to the Company.

(f) Effective as of the Closing Date, the Investor and the Company shall have executed and delivered the Investors' Rights Agreement, dated as of the date of the Initial Closing, by and among the Company and the Flash Investors (the "**Rights Agreement**").

(g) Promptly following the Closing Date, the Company shall deliver to Investor a certificate registered in Investor's name representing the Shares.

**2. Representations and Warranties of Investor.** Investor hereby represents and warrants to the Company and to FlashFunders, as of the date hereof and as of the Closing Date, as follows:

(a) Investor has all necessary power and authority to execute and deliver this Agreement and to carry out its provisions. All action on Investor's part required for the lawful execution and delivery of this Agreement has been taken. Upon its execution and delivery, this Agreement will be a valid and binding obligation of Investor, enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) as limited by general principles of equity that restrict the availability of equitable remedies.

(b) Investor is an "accredited investor" as such term is defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended (the "**Securities Act**"), and all information provided by Investor through the Platform relating to Investor's status as an accredited investor is complete, accurate and true in all respects.

(c) Investor is obtaining the Shares and any shares of Common Stock to be issued to Investor upon conversion of the Shares (the "**Conversion Shares**") for Investor's own account and Investor has no present intention of distributing or selling the Shares or the Conversion Shares except as permitted under the Securities Act and applicable state securities laws.

(d) Investor has sufficient knowledge and experience in business and financial matters to evaluate the Company, its proposed activities and the risks and merits of this investment. Investor has the ability to accept the high risk and lack of liquidity inherent in this type of investment.

(e) Investor understands and acknowledges that the Company has a limited financial and operating history and that an investment in the Company is highly speculative and involves substantial risks. Investor can bear the economic risk of Investor's investment and is able, without impairing Investor's financial condition, to hold the Shares and the Conversion Shares for an indefinite period of time and to suffer a complete loss of Investor's investment.

(f) Investor has had an opportunity to discuss the Company's business, management and financial affairs with directors, officers and management of the Company.

Investor has also had the opportunity to ask questions of and receive answers from the Company and its management regarding the terms and conditions of this investment. Investor understands the significant risks of this investment. Investor believes that it has received all the information Investor considers necessary or appropriate for deciding whether to purchase the Shares and the Conversion Shares. Investor understands that such discussions, as well as any information issued by the Company, were intended to describe certain aspects of the Company's business and prospects, but were not necessarily a thorough or exhaustive description. Investor acknowledges that any business plans, investor presentations or projections prepared by the Company have been, and continue to be, subject to change and that any projections included in such materials or otherwise are necessarily speculative in nature, and it can be expected that some or all of the assumptions underlying the projections will not materialize or will vary significantly from actual results. Investor also acknowledges that it is not relying on any statements or representations of the Company, FlashFunders, or their respective agents, for legal advice with respect to this investment or the transactions contemplated by this Agreement.

(g) Investor has the capacity to protect its own interests in connection with the purchase of the Shares by virtue of its business or financial expertise.

(h) Investor is aware that neither the Shares nor any Conversion Shares have been registered under the Securities Act of 1933, and that the Shares and the Conversion Shares are deemed to constitute "restricted securities" under Rule 144 promulgated under the Securities Act ("**Rule 144**"). Investor also understands that the Shares are being offered and sold pursuant to an exemption from registration contained in the Securities Act based in part upon Investor's representations contained in this Agreement.

(i) Investor understands that the Shares and, if issued, the Conversion Shares must be held indefinitely unless they are subsequently registered under the Securities Act or an exemption from such registration is available. Investor has been advised or is aware of the provisions of Rule 144, as in effect from time to time, which permit limited resale of shares purchased in a private placement subject to the satisfaction of certain conditions, including, among other things, the resale occurring following the required holding period under Rule 144.

(j) Investor acknowledges and agrees that the Shares are subject to restrictions on transfer set forth in the Rights Agreement and legends and restrictions on transfer described in Section 4 of this Agreement.

(k) If Investor is not a United States person (as defined by Section 7701(a)(30) of the Internal Revenue Code of 1986, as amended (the "**Code**")), Investor represents that Investor has satisfied itself as to the full observance of the laws of its jurisdiction in connection with any invitation to subscribe for the Shares or any use of this Agreement, including (i) the legal requirements within its jurisdiction for the purchase of the Shares, (ii) any foreign exchange restrictions applicable to such purchase, (iii) any governmental or other consents that may need to be obtained in connection with such purchase, and (iv) the income tax and other tax consequences, if any, that may be relevant to the purchase, holding, redemption, sale or transfer of the Shares. The Company's offer and sale and Investor's subscription and payment for and continued beneficial ownership of the Shares will not violate any applicable securities or other laws of Investor's jurisdiction.

(l) Investor has reviewed this Agreement in its entirety, has had an opportunity to obtain the advice of counsel prior to executing this Agreement and fully understands all provisions of this Agreement, the Charter and the Rights Agreement.

(m) Investor has reviewed with its own tax advisors the U.S. federal, state, local and foreign tax consequences of this investment and the transactions contemplated by this Agreement. With respect to such matters, Investor is relying solely on such advisors and not on any statements or representations of the Company, FlashFunders or any of their respective agents, written or oral. Investor understands that it (and not the Company) shall be responsible for its own tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

(n) If Investor is an individual, then Investor resides in the state or province identified in the address of Investor set forth on the signature page hereto; if Investor is a partnership, corporation, limited liability company or other entity, then the office or offices of Investor in which its investment decision was made is located at the address or addresses of Investor set forth on the signature page hereto.

**3. Representations and Warranties of the Company.** The Company hereby represents and warrants to and agrees with Investor that except as set forth on the Schedule of Exceptions attached hereto as Exhibit B (if any), each of the following statements is true and correct on the date hereof and, if this subscription is accepted by the Company in whole or in part, will be true and correct on the Closing Date:

(a) **Organization, Good Standing and Qualification.** The Company is a corporation duly organized, validly existing and in good standing under the laws of the state of organization. The Company has all requisite corporate power and authority to own and operate its properties and assets, to execute and deliver this Agreement, to issue and sell the Shares and the Conversion Shares and to carry out the provisions of this Agreement and the Charter.

(b) **Capitalization.**

(i) Immediately prior to the Initial Closing, the authorized capital stock of the Company will be as set forth in the Charter. The capitalization table attached to this Agreement as Exhibit C (the “**Cap Table**”) sets forth, as of the date indicated thereon, the number of outstanding shares of capital stock of each class or series of shares of the Company outstanding on such date.

(ii) In addition to the outstanding shares of capital stock set forth on the Cap Table, as of the Initial Closing the Company has reserved:

(1) the Shares for issuance pursuant to this Agreement and the Conversion Shares for issuance upon conversion of the Shares;

(2) the Incentive Pool Shares for issuance pursuant to one or more equity incentive plans that are either currently adopted or to be adopted as soon as practicable following the Initial Closing;

(3) securities issuable upon exercise of the investment rights granted to FlashFunders or its affiliates in connection with utilizing the Platform for the Offering; and

(4) the shares, if any, set forth on the Cap Table as reserved for issuance upon exercise of the outstanding warrants, convertible notes or other equity securities of the Company set forth on the Cap Table.

(iii) The Common Stock and the Flash Preferred shall have the rights, preferences, privileges and restrictions set forth in the Charter. The outstanding shares have been duly authorized and validly issued in compliance in all material respects with applicable laws, and are fully paid and nonassessable.

(iv) The Shares, when issued and delivered and paid for in compliance with the provisions of this Agreement, will be validly issued, fully paid and nonassessable. The Conversion Shares have been duly and validly reserved and, when issued in compliance with the provisions of this Agreement, the Charter and applicable law, will be validly issued, fully paid and nonassessable. The Shares and the Conversion Shares will be free of any liens or encumbrances, other than any liens or encumbrances created by or imposed upon the Investor; *provided, however*, that the Shares and the Conversion Shares are subject to restrictions on transfer under U.S. state and/or federal securities laws and as set forth herein and in the Rights Agreement. Except as set forth in the Rights Agreement, the Shares and the Conversion Shares are not subject to any preemptive rights or rights of first refusal.

**(c) Authorization; Binding Obligations.** All corporate action on the part of the Company, its officers, directors and stockholders necessary for the authorization of this Agreement and the Charter, the performance of all obligations of the Company hereunder and thereunder on the Closing Date and the authorization, sale, issuance and delivery of the Shares pursuant hereto and pursuant to the Charter has been taken or will be taken prior to the Closing Date. This Agreement, when executed and delivered, will be valid and binding obligation of the Company enforceable in accordance with its terms, except (a) as limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws of general application affecting enforcement of creditors' rights, and (b) general principles of equity that restrict the availability of equitable remedies. The sale of the Shares hereunder and the subsequent conversion of the Shares into the Conversion Shares are not and will not be subject to any preemptive rights or rights of first refusal that have not been properly waived or complied with as of the date of such sale or conversion.

**(d) Compliance with Laws.** The Company is not in violation of any applicable statute, rule, regulation, order or restriction of any domestic or foreign government or any instrumentality or agency thereof in respect of the conduct of its business or the ownership of its properties, which violation would materially and adversely affect the business, assets, liabilities, financial condition, operations or prospects of the Company.

**(e) Offering Valid.** Assuming the accuracy of Investor's representations and warranties contained herein, the offer, sale and issuance of the Shares and the Conversion Shares will be exempt from the registration requirements of the Securities Act, and will have been

registered or qualified (or will be exempt from registration and qualification) under the registration, permit or qualification requirements of all applicable state securities laws. Neither the Company nor any agent on its behalf has solicited or will solicit any offers to sell or has offered to sell or will offer to sell all or any part of the Shares to any person or persons so as to bring the sale of the Shares by the Company within the registration provisions of the Securities Act or any state securities laws.

**(f) Material Contracts.** All of the Company's agreements and contracts in effect as of the date of this Agreement involving aggregate payments to or from the Company in excess of \$25,000 and all other contracts deemed material by the Company are, to the Company's knowledge, valid, binding and in full force and effect in all material respects, subject to the laws of general application relating to bankruptcy, insolvency and the relief of debtors and the rules of law governing specific performance, injunctive relief and other equitable remedies.

**(g) Intellectual Property.** To the knowledge of the Company (without having conducted any special investigation or patent search), the Company owns or possesses or can obtain on commercially reasonable terms sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses (software or otherwise), information, processes and similar proprietary rights ("**Intellectual Property**") necessary to the business of the Company as presently conducted, the lack of which could reasonably be expected to have a material adverse effect on the Company. Except for agreements with its own employees or consultants, standard end-user license agreements, support/maintenance agreements and agreements entered in the ordinary course of the Company's business, there are no outstanding options, licenses or agreements relating to the Intellectual Property of the Company, and the Company is not bound by or a party to any options, licenses or agreements with respect to the Intellectual Property of any other person or entity. The Company has not received any written communication alleging that the Company has violated any of the Intellectual Property of any other person or entity.

**(h) Title to Properties and Assets; Liens.** The Company has good and marketable title to its properties and assets, and has good title to all its leasehold interests, in each case subject to no material mortgage, pledge, lien, lease, encumbrance or charge, other than (i) liens for current taxes not yet due and payable, (ii) liens imposed by law and incurred in the ordinary course of business for obligations not past due, (iii) liens in respect of pledges or deposits under workers' compensation laws or similar legislation, and (iv) liens, encumbrances and defects in title which do not in any case materially detract from the value of the property subject thereto or have a material adverse effect on the Company, and which have not arisen otherwise than in the ordinary course of business.

**(i) Compliance with Other Instruments.** The Company is not in violation of any material term of its Charter or Bylaws, each as amended to date, or, to the Company's knowledge, in any material respect of any term or provision of any material indebtedness, contract or agreement to which it is party which would have a material adverse effect on the Company. The execution and delivery of this Agreement by the Company, the performance by the Company of its obligations pursuant to this Agreement, and the issuance of the Shares and the Conversion Shares, will not result in any material violation of, or materially conflict with, or constitute a material default under, the Company's Charter or Bylaws, each as amended to date.

(j) **Tax Returns and Payments.** The Company has timely filed all material tax returns required to be filed by it with appropriate federal, state and local governmental agencies. These returns and reports are true and correct in all material respects. All taxes shown to be due and payable on such returns, any assessments imposed, and, to the Company's knowledge, all other taxes due and payable by the Company on or before the Initial Closing have been paid or will be paid prior to the time they become delinquent.

(k) **Litigation.** There is no pending action, suit, proceeding, arbitration, mediation, complaint, claim, charge or investigation before any court, arbitrator, mediator or governmental body or, to the Company's knowledge, currently threatened in writing (i) against the Company or (ii) against any officer, director, key employee or consultant of the Company arising out of his or her consulting, employment or board relationship with the Company or that could otherwise materially impact the Company.

(l) **No Disqualification Event.** None of the Company, any of its predecessors, any affiliated issuer, any director, executive officer, other officer of the Company participating in the offering of the Shares, any beneficial owner of 20% or more of the Company's outstanding voting equity securities, calculated on the basis of voting power, nor any promoter (as that term is defined in Rule 405 under the Securities Act connected with the Company in any capacity at the time of sale (each, an "**Issuer Covered Person**" and, together, "**Issuer Covered Persons**") is subject to any of the "Bad Actor" disqualifications described in Rule 506(d)(1)(i) to (viii) under the Securities Act (a "**Disqualification Event**"), except for a Disqualification Event covered by Rule 506(d)(2) or (d)(3). The Company has exercised reasonable care to determine whether any Issuer Covered Person is subject to a Disqualification Event. The Company has complied, to the extent applicable, with its disclosure obligations under Rule 506(e), and has furnished to each Investor a copy of any disclosures provided thereunder.

#### **4. Restrictive Legends.**

All certificates representing the Shares and the Conversion Shares shall have endorsed thereon the following legends:

(a) "THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO REGISTRATION OR AN EXEMPTION THEREFROM. THE ISSUER OF THESE SECURITIES MAY REQUIRE AN OPINION OF COUNSEL REASONABLY SATISFACTORY TO THE ISSUER THAT SUCH OFFER, SALE OR TRANSFER, PLEDGE OR HYPOTHECATION OTHERWISE COMPLIES WITH THE ACT AND ANY APPLICABLE STATE SECURITIES LAWS."

(b) Any legend required under applicable state securities laws.



## **5. Indemnification.**

Investor hereby agrees to indemnify and hold harmless the Company, FlashFunders, and any of their respective officers, directors, controlling persons, equity holders, agents and employees, who is or may be a party or is or may be threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of or arising from any misrepresentation or misstatement of facts or omission to represent or state facts made by Investor to the Company or FlashFunders (or any agent or representative of any of them), or omitted by Investor, concerning the Investor or Investor's authority to invest or financial position in connection with the offering or sale of the Shares, against losses, damages, liabilities or expenses for which the Company, FlashFunders, or any of their respective officers, directors or controlling persons, equity holders, agents or employees has not otherwise been reimbursed (including attorneys' fees, judgments, fines and amounts paid in settlement) actually and reasonably incurred by such person or entity in connection with such action, suit or proceeding.

## **6. Miscellaneous.**

(a) **Further Assurances.** The parties agree to execute such further instruments and to take all such further action as may reasonably be necessary to carry out the intent of this Agreement.

(b) **Notices.** Any notice required or permitted hereunder shall be given in writing and shall be via electronic mail (or mailed by registered or certified mail, postage prepaid) addressed:

(i) if to Investor, at Investor's electronic mail address (or mailing address) as provided by the Investor through the Platform and set forth in this Agreement, as may be updated in accordance with the provisions hereof;

(ii) if to any other holder of any Shares or Conversion Shares, at such electronic mail address (or mailing address) as shown in the Company's records, or, until any such holder so furnishes an electronic mail address and mailing address to the Company, then to and at the address of the last holder of such Shares or Conversion Shares for which the Company has contact information in its records; or

(iii) if to the Company, to yuri@swggr.net (or, if by mail, the Company's principal executive offices), Attn: Chief Executive Officer, or at such other address as the Company shall have furnished to the Flash Investors.

With respect to any notice given by the Company under any provision of the Delaware General Corporation Law or the Company's Charter or Bylaws, Investor agrees that such notice may be given by electronic mail.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given at the earlier of its receipt or 24 hours after the same has been sent by electronic mail (or, if sent by mail, at the earlier of its receipt or 72 hours after

the same has been deposited in a regularly maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid).

**(c) Governing Law; Dispute Resolutions.** This Agreement shall be governed in all respects by the internal laws of the State of California, without regard to the conflict of laws principals of such state. Any suit, action or other proceeding arising out of or based upon this Agreement shall be subject to the provisions of the Mutual Agreement to Arbitrate and Waiver of Class Action Class attached to this Agreement as Attachment 1 and incorporated herein and made a part of this Agreement by this reference.

**(d) Successors and Assigns.** This Agreement shall inure to the benefit of the successors and assigns of the Company and, subject to the restrictions on transfer herein set forth, shall be binding upon Investor, his, her or its heirs, executors, administrators, successors and assigns.

**(e) Entire Agreement.** This Agreement, including the Attachment and Exhibits, together with applicable provisions of the Platform Terms of Use and Privacy Policy, constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes and merges all prior agreements or understandings, whether written or oral.

**(f) Severability.** If one or more provisions of this Agreement are held to be unenforceable under applicable law, portions of such provisions, or such provisions in their entirety, to the extent necessary, shall be severed from this Agreement, and the balance of this Agreement shall be interpreted as if such provisions were so excluded and shall be enforceable in accordance with its terms.

**(g) Amendment and Waiver.** This Agreement may be amended or modified, and the obligations of the Company and the rights of Investor under this Agreement may be waived or terminated, only upon the written consent of the Company and Investor.

**(h) Expenses.** Each party shall pay all costs and expenses that it incurs with respect to the negotiation, execution, delivery and performance of this Agreement.

**(i) Delays or Omissions.** It is agreed that no delay or omission to exercise any right, power or remedy accruing to any party, upon any breach, default or noncompliance by another party under this Agreement, the other Subscription Agreements or the Charter, shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any such breach, default or noncompliance, or any acquiescence therein, or of or in any similar breach, default or noncompliance thereafter occurring. It is further agreed that any waiver, permit, consent or approval of any kind or character on any party's part of any breach, default or noncompliance under this Agreement, the other Subscription Agreements or the Charter or any waiver on such party's part of any provisions or conditions of this Agreement, the Subscription Agreements, or the Charter must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement, the other Subscription Agreements, the Charter, law, or otherwise afforded to any party, shall be cumulative and not alternative.

(j) **Attorneys' Fees.** In the event that any suit or action is instituted under or in relation to this Agreement, including without limitation to enforce any provision in this Agreement, the prevailing party in such dispute shall be entitled to recover from the losing party all fees, costs and expenses of enforcing any right of such prevailing party under or with respect to this Agreement, including without limitation, such reasonable fees and expenses of attorneys and accountants, which shall include, without limitation, all fees, costs and expenses of appeals.

(k) **Third Party Beneficiary.** The parties hereto acknowledge and agree that FlashFunders is a direct beneficiary with respect to certain provisions of this Agreement and may rely on and enforce each of such provisions as if it were a party hereto. Except as set forth in the preceding sentence, this Agreement is for the sole benefit of the parties hereto and their permitted assigns and nothing herein expressed or implied shall give or be construed to give to any person or entities, other than the parties hereto and such assigns, any legal or equitable rights hereunder.

(l) **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(m) **Electronic Execution and Delivery.** A digital reproduction, portable document format (“**.pdf**”) or other reproduction of this Agreement may be executed by one or more parties hereto and delivered by such party by electronic signature (including signature via *DocuSign* or similar services), electronic mail or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes.

(n) **Titles and Subtitles.** The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

(o) **Pronouns.** All pronouns contained herein, and any variations thereof, shall be deemed to refer to the masculine, feminine or neutral, singular or plural, as to the identity of the parties hereto may require.

(p) **Waiver of Conflicts.** Stubbs Alderton & Markiles, LLP (“**Stubbs Alderton**”) has served as counsel to the Company in connection with the transactions contemplated pursuant to this Agreement (the “**Financing**”). The Company and each of the Flash Investors acknowledges that a partnership composed of partners of Stubbs Alderton is a significant stockholder of FlashFunders, Inc. and Stubbs Alderton is general counsel to FlashFunders. As such, the Company acknowledges that Stubbs Alderton could be considered to have interests adverse to the Company. Further, each party to this Agreement acknowledges that Stubbs Alderton may have in the past performed and may continue to perform legal services for certain of the Flash Investors in matters unrelated to the Financing, including the representation of such Flash Investors in venture capital financings and other matters. The Company and each Flash Investor hereby (a) acknowledges that it has had an opportunity to ask for and have obtained information relevant to such representation, including disclosure of the reasonably foreseeable adverse consequences of such representation; (b) acknowledge that with respect to

the Financing, Stubbs Alderton has represented solely the Company and FlashFunders, and not any Flash Investor or any stockholder, director or employee of the Company; (c) gives its informed consent to Stubbs Alderton's representation of the Company and FlashFunders in the Financing and to Stubbs Alderton's representation of certain of the Flash Investors in such unrelated matters.

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**IN WITNESS WHEREOF**, each of the parties hereto has executed this Flash Seed Preferred Stock Subscription Agreement as of the day and year set forth below.

**INVESTOR:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Telephone \_\_\_\_\_

Email: \_\_\_\_\_

**ACCEPTED:**

SWGGR MEDIA, INC.

By: \_\_\_\_\_

Name: Yuri C. Moreira

Title: Chief Executive Officer

Acceptance Date: \_\_\_\_\_

Shares Accepted: \_\_\_\_\_

Address: 4315 Inglewood Blvd. #13  
Los Angeles, CA 90066

Telephone: 774-249-2121

Email: yuri@swggr.net

## ATTACHMENT 1

### **MUTUAL AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTION CLAIMS**

THIS MUTUAL AGREEMENT TO ARBITRATE AND WAIVER OF CLASS ACTION CLAIMS (this “**Arbitration Agreement**”) is made as of the date set forth on the Company’s signature page below, by and between Swggr Media, Inc., a Delaware corporation (the “**Company**”), and the “Investor” set forth on the Investor Acceptance page below (“**Investor**”). The words “you” and “your” in this Arbitration Agreement refer to the undersigned Investor and anyone acting on the Investor’s behalf including, without limitation, the Investor’s family, heirs, agents and assigns.

#### **RECITALS**

**A.** You and the Company have entered into a Flash Seed Preferred Stock Subscription Agreement to which this Arbitration Agreement is attached (the “**Purchase Agreement**”), and it is a condition to the closing of the sale of the shares of the Company’s capital stock under the Purchase Agreement that you and the Company execute and deliver this Arbitration Agreement.

**B.** You and the Company are executing this Arbitration Agreement to obtain the benefit of a speedy, impartial and cost-effective dispute resolution procedure.

#### **AGREEMENT**

NOW, THEREFORE, for the right to resolve your claims by arbitration rather than through the courts, you agree with the Company as follows:

**1. Agreement to Arbitrate.** Except as otherwise expressly provided in this Arbitration Agreement, you and the Company agree to settle by final and binding arbitration any claims and controversies arising out of or relating to your investment in the Company (“**Arbitrable Claims**”), which the Company may have against you or you may have against the Company or any third party (each and every such party is referred to herein as a “**Covered Party**”), including but not limited to the following: (a) any claim involving conduct alleged to be in violation of any local, state or federal constitution, regulation, ordinance, statute or common law; (b) any claim for breach of any contract, covenant or duty owed, express or implied; and (c) any claim for fraud, misrepresentation, or any other tort. This Agreement is enforceable under and subject to the Federal Arbitration Act, 9 U.S.C. Sec 1 *et. seq.* (the “**FAA**”). For avoidance of doubt, and not as a limitation, FlashFundors, Inc. and its affiliates and other related or associated persons are intended to be Covered Parties.

**2. Waiver of Class Action Claims. THE PARTIES AGREE THAT THEY MAY BRING CLAIMS AGAINST THE OTHER ONLY IN THEIR RESPECTIVE INDIVIDUAL CAPACITIES, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION.**

**3. Arbitration Procedures.** Arbitration shall be filed with JAMS, Inc. (“**JAMS**”), and heard by one arbitrator (the “**Arbitrator**”) in the County in which the Company’s principal

executive offices are located (unless otherwise agreed by the parties to the arbitration). The arbitration shall be conducted in accordance with the JAMS Comprehensive Arbitration Rules & Procedures (the “**Rules**”) in effect at the time the claim is made. The Rules can be found and obtained at <http://www.jamsadr.com/rules-comprehensive-arbitration/> or alternatively can be obtained by requesting a copy from the Company. By signing this Agreement, you acknowledge that you have had an opportunity to review the Rules before signing this Agreement. The Arbitrator shall have the authority to order discovery by way of deposition, interrogatory, document production, or otherwise, as the Arbitrator considers necessary to a full and fair exploration of the issues in dispute, consistent with the expedited nature of arbitration. The Arbitrator shall apply, as applicable, federal or California substantive law and law of remedies. The Arbitrator’s remedial authority shall be no greater than that available under each statutory or common law theory asserted and is authorized to award any remedy or relief available under applicable law that the Arbitrator deems just and equitable, including any remedy or relief that would have been available to the parties had the matter been heard in a court. The Arbitrator shall have the authority to provide for the award of attorneys’ fees and costs if such award is separately authorized by applicable law. The Arbitrator shall issue a written opinion that includes the factual and legal basis for any decision and award, unless the parties agree otherwise. A judgment upon any award rendered by the Arbitrator may be entered in any court having jurisdiction. You, the Company, any other Covered Party that is a party to the arbitration, legal counsel and the Arbitrator shall treat all arbitration proceedings, including any decision, award and opinion in support thereof, as confidential, and the Arbitrator shall issue such orders as are reasonably necessary to maintain such confidentiality. You will be obligated to pay the then-current Superior Court of California filing fee towards the costs of the arbitration and shall not be required to pay any cost or expense of the arbitration that you would not be required to pay if the matter had been heard in a court. The Company shall bear all other costs unique to arbitration in compliance with applicable law.

**4. Claims Not Covered By This Arbitration Agreement.** This Arbitration Agreement does not apply to or cover the following claims related to your investment in the Company: (a) claims brought in a court of competent jurisdiction to compel arbitration under this Arbitration Agreement, to enforce or vacate an arbitration award, or to obtain preliminary, injunctive and/or other equitable relief in support of claims to be prosecuted in an arbitration by any party; (b) any claim by the Company or other Covered Person seeking to enforce or protect, or concerning the validity of, any of their respective intellectual property rights; and (c) any other claim not properly arbitrable under the law or otherwise prohibited by law from being arbitrated.

**5. Survival of Provisions.** This Arbitration Agreement shall continue in effect after your investment in the Company is consummated and shall apply to any arbitrable claim whether it arises or is asserted before, during or after any period in which you hold the Company’s securities. You and the Company agree that this Arbitration Agreement can be modified or revoked only by a writing signed by you, the Company, and each other Covered Party against which or whom an arbitrable claim may be asserted hereunder, which specifically states that you, the Company, and such Covered Parties intend to modify or revoke this Arbitration Agreement.

**6. Severability.** If any one or more provisions of this Arbitration Agreement is found, for any reason, invalid, voidable or unenforceable, in whole or in part, with respect to any claim or class of claims, the finding shall in no way affect any other provision of this Arbitration Agreement or the validity or enforcement of the remainder of this Arbitration Agreement, and

any provision thus affected shall itself be modified only to the extent necessary to bring the provision within the applicable requirements of the law.

**7. Third Parties Beneficiaries.** The parties expressly acknowledge, agree and confirm that each and every Covered Party are express third party beneficiaries of this Arbitration Agreement, and each such Covered Party shall have and possess all rights and remedies hereunder as if they each were an original party hereto.

**8. Electronic Execution and Delivery.** A digital reproduction, portable document format (“**.pdf**”) or other reproduction of this Arbitration Agreement may be executed by one or more parties hereto and delivered by such party by electronic signature (including signature via *DocuSign* or similar services), electronic mail or any similar electronic transmission device pursuant to which the signature of or on behalf of such party can be seen. Such execution and delivery shall be considered valid, binding and effective for all purposes.

**9. Sole and Entire Agreement.** The parties acknowledge that this Arbitration Agreement constitutes the complete agreement of the parties on the subject matter contained herein, and supersedes any prior or contemporaneous oral or written agreement or understanding on the subject matter contained herein.

**10. Consideration.** The parties agree that there is good and valuable consideration for the execution of this Arbitration Agreement, including but not limited to, the requirement that the agreement to arbitrate all claims is mutual between the parties, and other good and valuable consideration.

Swggr Media, Inc.

By: \_\_\_\_\_

Name: Yuri C. Moreira

Title: Chief Executive Officer

Date: \_\_\_\_\_



### INVESTOR'S ACCEPTANCE

The undersigned Investor acknowledges that it has carefully read and understands the foregoing Arbitration Agreement, that it has received the advice of independent counsel with respect to the foregoing Arbitration Agreement, and that it agrees to be bound by and comply with all of its terms. The Investor acknowledges that it has entered into this Arbitration Agreement voluntarily and that it is not relying on any representation, oral or written, as to the effect, enforceability or meaning of this Arbitration Agreement, except as specifically set forth in this Arbitration Agreement. THE UNDERSIGNED INVESTOR UNDERSTANDS AND ACKNOWLEDGES THAT BY SIGNING THIS ARBITRATION AGREEMENT, THE COMPANY AND THE INVESTOR, AND THE OTHER COVERED PARTIES REFERENCED HEREIN, ARE GIVING UP THE RIGHT TO A JURY TRIAL AND TO A TRIAL IN A COURT OF LAW WITH RESPECT TO ANY ARBITRABLE CLAIM ANY OF THEM MAY HAVE AGAINST THE OTHERS. THE INVESTOR ALSO UNDERSTANDS AND ACKNOWLEDGES THAT, BY SIGNING THIS ARBITRATION AGREEMENT, **THE COMPANY AND THE INVESTOR EACH EXPRESSLY WAIVE THE RIGHT TO PURSUE ANY ARBITRABLE CLAIM AGAINST THE OTHER AND AGAINST THE OTHER COVERED PARTIES, THROUGH ANY PURPORTED CLASS OR COLLECTIVE ACTION OR OTHER REPRESENTATIVE ACTION.**

By:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date:\_\_\_\_\_

**EXHIBIT A**  
**AMENDED AND RESTATED CERTIFICATE OF INCORPORATION**

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION OF**  
**SWGGR MEDIA, INC.**

Swggr Media, Inc., a corporation organized and existing under the laws of the State of Delaware (the “**Corporation**”), certifies that:

A. The name of the Corporation is Swggr Media, Inc.. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on August 22, 2014.

B. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware, and has been duly approved by the written consent of the stockholders of the Corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

C. The text of the Certificate of Incorporation is amended and restated to read as set forth in EXHIBIT A attached hereto.

IN WITNESS WHEREOF, Swggr Media, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by Yuri C. Moreira, a duly authorized officer of the Corporation, on \_\_\_\_\_.

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Name: Yuri C. Moreira  
Title: Chief Executive Officer

## **EXHIBIT A**

### ARTICLE I

The name of the Corporation is Swggr Media, Inc. (the “**Corporation**”).

### ARTICLE II

The purpose of this corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

### ARTICLE III

The address of the Corporation’s registered office in the State of Delaware is 160 Greentree Drive, Suite 101, Dover, County of Kent, Delaware 19904. The name of the registered agent at such address is National Registered Agents, Inc..

### ARTICLE IV

The total number of shares of stock that the Corporation shall have authority to issue is 2,500,000, consisting of 2,000,000 shares of Common Stock, \$0.0001 par value per share (the “**Common Stock**”), and 500,000 shares of Preferred Stock, \$0.0001 par value per share (the “**Preferred Stock**”). The first Series of Preferred Stock shall be designated “**Flash Seed Preferred Stock**” and shall consist of 317,258 shares.

The Board (as defined below) is authorized to establish from time to time, by resolution or resolutions, the number of shares to be included in each additional wholly unissued series of Preferred Stock and to fix and alter the rights, preferences, privileges, and restrictions granted to and imposed upon such series of Preferred Stock, and to fix the designation of any such series of Preferred Stock. Subject to compliance with applicable protective voting rights that have been or may be granted to Preferred Stock or any series thereof in any Certificate of Designation or the Corporation’s Certificate of Incorporation (“**Protective Provisions**”), but notwithstanding any other rights of Preferred Stock or any series thereof, the rights, privileges, preferences and restrictions of any such additional series may be subordinated to, *pari passu* with (including, without limitation, inclusion in provisions with respect to liquidation, preferences, redemption and/or approval of matters by vote or written consent), or senior to, any of those of any present or future class or series of Preferred Stock or Common Stock. Subject to compliance with applicable Protective Provisions, the Board is also authorized to increase or decrease (but not below the number of shares of such series then outstanding) the number of shares of any series prior or subsequent to the original issue of shares of that series.

### ARTICLE V

The terms and provisions of the Common Stock and Flash Seed Preferred Stock are as follows:

1. Definitions. For purposes of this ARTICLE V, the following definitions shall apply:

(a) **“Board”** means the Board of Directors of the Corporation.

(b) **“Conversion Price”** means \$1.576 per share for the Flash Preferred (subject to adjustment from time to time as set forth elsewhere herein).

(c) **“Distribution”** means the transfer of cash or other property without consideration whether by way of dividend or otherwise, other than dividends on Common Stock payable in Common Stock, or the purchase or redemption of shares of the Corporation by the Corporation for cash or property other than: (i) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries upon termination of their employment or services pursuant to agreements providing for the right of said repurchase, (ii) repurchases of Common Stock issued to or held by employees, officers, directors or consultants of the Corporation or its subsidiaries pursuant to rights of first refusal contained in agreements providing for such right, and (iii) repurchase of capital stock of the Corporation in connection with the settlement of disputes with any stockholder.

(d) **“Flash Preferred”** shall mean the Flash Seed Preferred Stock.

(e) **“Liquidation Event”** means any of the following: (i) the acquisition of the Corporation by another entity by means of any transaction or series of related transactions to which the Corporation is party (including, without limitation, any stock acquisition, reorganization, merger or consolidation but excluding any sale of stock for capital raising purposes) other than a transaction or series of related transactions in which the holders of the voting securities of the Corporation outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, as a result of shares in the Corporation held by such holders prior to such transaction or series of related transactions, a majority of the total voting power represented by the outstanding voting securities of the Corporation or such other surviving or resulting entity (or if the Corporation or such other surviving or resulting entity is a wholly-owned subsidiary immediately following such acquisition, its parent); (ii) a sale, lease or other disposition of all or substantially all of the assets of the Corporation and its subsidiaries taken as a whole by means of any transaction or series of related transactions, except where such sale, lease or other disposition is to a wholly-owned subsidiary of the Corporation; or (iii) any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary. The treatment of any transaction or series of related transactions as a Liquidation Event pursuant to clause (i) or (ii) of the preceding sentence may be waived with respect to any series of Preferred Stock by the consent or vote of a majority of the outstanding shares of such series.

(f) **“Liquidation Preference”** shall mean the Original Issue Price plus any declared and unpaid dividends on such shares.

(g) **“Original Issue Price”** shall mean \$1.576 per share for the Flash Preferred (subject to adjustment from time to time for Recapitalizations as set forth elsewhere herein).

(h) **“Recapitalization”** shall mean any stock dividend, stock split, combination of shares, reorganization, recapitalization, reclassification or other similar event.

2. Dividend Rights. In the event that dividends are paid on any share of Common Stock (other than dividends on Common Stock payable in additional shares of Common Stock), the Company shall pay a dividend on all outstanding shares of Flash Preferred in a per share amount equal (on an as-if-converted to Common Stock basis) to the amount paid or set aside for each share of Common Stock.

3. Liquidation Rights

(a) Liquidation Preference. In the event of any Liquidation Event, the holders of the Flash Preferred shall be entitled to receive, prior and in preference to any Distribution of any of the assets of the Corporation to the holders of the Common Stock by reason of their ownership of such stock, an amount per share for each share of Flash Preferred held by them equal to the greater of (i) Liquidation Preference for such share of Flash Preferred and (ii) such amount per share as would have been payable had all shares of Flash Preferred been converted into Common Stock pursuant to Section 4 immediately prior to such Liquidation Event (the amount payable pursuant to this sentence is hereinafter referred to as the “**Liquidation Preference Amount**”). If upon a Liquidation Event, the assets of the Corporation legally available for distribution to the holders of the Flash Preferred are insufficient to permit the payment to such holders of the full amounts specified in this Section 3(a), then the entire assets of the Corporation legally available for distribution shall be distributed with equal priority and *pro rata* among the holders of the Flash Preferred in proportion to the full amounts they would otherwise be entitled to receive pursuant to this Section 3(a).

(b) Remaining Assets. In the event of any Liquidation Event, after the payment or setting aside for payment to the holders of Flash Preferred of the full Liquidation Preference Amount, the entire remaining assets of the Corporation legally available for distribution shall be distributed *pro rata* to holders of the Common Stock of the Corporation in proportion to the number of shares of Common Stock held by them.

(c) Valuation of Non-Cash Consideration. If any assets of the Corporation distributed to stockholders in connection with any Liquidation Event are other than cash, then the value of such assets shall be their fair market value as determined in good faith by the Board.

4. Conversion. The holders of the Flash Preferred shall have conversion rights as follows:

(a) Right to Convert. Each share of Flash Preferred shall be convertible, at the option of the holder thereof, at any time after the date of issuance of such share at the office of the Corporation or any transfer agent for the Flash Preferred, into that number of fully-paid, nonassessable shares of Common Stock determined by dividing the Original Issue Price by the Conversion Price. The number of shares of Common Stock into which each share of Flash Preferred may be converted is hereinafter referred to as the “**Conversion Rate**” for such series. Upon any decrease or increase in the Conversion Price for the Flash Preferred, as described in this Section 4, the Conversion Rate shall be appropriately increased or decreased.

(b) Automatic Conversion. Each share of Flash Preferred shall automatically be converted into fully-paid, non-assessable shares of Common Stock at the then effective

Conversion Rate for such share (i) immediately prior to the closing of a firm commitment underwritten initial public offering pursuant to an effective registration statement filed under the Securities Act of 1933, as amended (the “**Securities Act**”), covering the offer and sale of the Corporation’s Common Stock, or (ii) upon the receipt by the Corporation of a written request or election for such conversion from the holders of a majority of the Flash Preferred then outstanding (voting as a single class and on an as-converted basis), or, if later, the effective date for conversion specified in such requests (each of the events referred to in (i) and (ii) are referred to herein as an “**Automatic Conversion Event**”).

(c) Mechanics of Conversion. No fractional shares of Common Stock shall be issued upon conversion of Flash Preferred. In lieu of any fractional shares to which the holder would otherwise be entitled, the Corporation shall pay cash equal to such fraction multiplied by the then fair market value of a share of Common Stock as determined by the Board. For such purpose, all shares of Flash Preferred held by each holder of Flash Preferred shall be aggregated, and any resulting fractional share of Common Stock shall be paid in cash. Before any holder of Flash Preferred shall be entitled to convert the same into full shares of Common Stock, and to receive certificates therefor, such holder shall either (A) surrender the certificate or certificates therefor, duly endorsed, at the office of the Corporation or of any transfer agent for the Flash Preferred or (B) notify the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and execute an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates, and shall give written notice to the Corporation at such office that such holder elects to convert the same; *provided, however*, that on the date of an Automatic Conversion Event, the outstanding shares of Flash Preferred shall be converted automatically without any further action by the holders of such shares and whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; *provided further*, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such Automatic Conversion Event unless either the certificates evidencing such shares of Flash Preferred are delivered to the Corporation or its transfer agent as provided above, or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation to indemnify the Corporation from any loss incurred by it in connection with such certificates. On the date of the occurrence of an Automatic Conversion Event, each holder of record of shares of Flash Preferred shall be deemed to be the holder of record of the Common Stock issuable upon such conversion, notwithstanding that the certificates representing such shares of Flash Preferred shall not have been surrendered at the office of the Corporation, that notice from the Corporation shall not have been received by any holder of record of shares of Flash Preferred, or that the certificates evidencing such shares of Common Stock shall not then be actually delivered to such holder.

(d) Adjustments for Subdivisions or Combinations of Common Stock. In the event the outstanding shares of Common Stock shall be subdivided (by stock split, by payment of a stock dividend or otherwise) into a greater number of shares of Common Stock, the Conversion Price of the Flash Preferred in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Common Stock shall be combined (by reclassification or otherwise) into a lesser number of shares of Common Stock, the Conversion Price in effect

immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(e) Adjustments for Subdivisions or Combinations of Flash Preferred. In the event the outstanding shares of Flash Preferred shall be subdivided (by stock split, by payment of a stock dividend or otherwise), into a greater number of shares of Flash Preferred, the Original Issue Price of the Flash Preferred in effect immediately prior to such subdivision shall, concurrently with the effectiveness of such subdivision, be proportionately decreased. In the event the outstanding shares of Flash Preferred shall be combined (by reclassification or otherwise) into a lesser number of shares of Flash Preferred, the Original Issue Price of the Flash Preferred in effect immediately prior to such combination shall, concurrently with the effectiveness of such combination, be proportionately increased.

(f) Adjustments for Reclassification, Exchange and Substitution. Subject to Section 3 above (“Liquidation Rights”), if the Common Stock issuable upon conversion of the Flash Preferred shall be changed into the same or a different number of shares of any other class or classes of stock, whether by capital reorganization, reclassification or otherwise (other than a subdivision or combination of shares provided for above), then, in any such event, in lieu of the number of shares of Common Stock which the holders of Flash Preferred would otherwise have been entitled to receive, each holder of such Flash Preferred shall have the right thereafter to convert such shares of Flash Preferred into a number of shares of such other class or classes of stock which a holder of the number of shares of Common Stock deliverable upon conversion of such Flash Preferred immediately before that change would have been entitled to receive in such reorganization or reclassification, all subject to further adjustment as provided herein with respect to such other shares.

(g) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to this Section 4, the Corporation at its expense shall promptly compute such adjustment or readjustment in accordance with the terms hereof and furnish to each holder of Flash Preferred a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall, upon the written request at any time of any holder of Flash Preferred, furnish or cause to be furnished to such holder a like certificate setting forth (i) such adjustments and readjustments, (ii) the Conversion Price at the time in effect and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of Flash Preferred.

(h) Notices of Record Date. In the event that this Corporation shall propose at any time:

(i) to declare any Distribution upon its Common Stock, whether in cash, property, stock or other securities, whether or not a regular cash dividend and whether or not out of earnings or earned surplus;

(ii) to effect any reclassification or recapitalization of its Common Stock outstanding involving a change in the Common Stock; or



(iii) to voluntarily liquidate or dissolve or to enter into any transaction deemed to be a Liquidation Event;

then, in connection with each such event, this Corporation shall send to the holders of the Flash Preferred at least 10 days' prior written notice of the date on which a record shall be taken for such Distribution (and specifying the date on which the holders of Common Stock shall be entitled thereto and, if applicable, the amount and character of such Distribution) or for determining rights to vote in respect of the matters referred to in (ii) and (iii) above.

(i) Reservation of Stock Issuable Upon Conversion. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of the Preferred Stock, such number of its shares of Common Stock as shall from time to time be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock shall not be sufficient to effect the conversion of all then outstanding shares of the Preferred Stock, the Corporation will take such corporate action as may, in the opinion of its counsel, be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as shall be sufficient for such purpose.

## 5. Voting

(a) General. Except as otherwise expressly provided herein or as required by law, the holders of Preferred Stock and the holders of Common Stock shall vote together and not as separate classes.

(b) Flash Preferred. Each holder of Flash Preferred shall be entitled to the number of votes equal to the number of shares of Common Stock into which the shares of Flash Preferred held by such holder could be converted as of the record date. The holders of shares of Flash Preferred shall be entitled to vote on all matters on which the Common Stock shall be entitled to vote. Holders of Flash Preferred shall be entitled to notice of any stockholders' meeting in accordance with the Bylaws of the Corporation. Fractional votes shall not, however, be permitted and any fractional voting rights resulting from the above formula (after aggregating all shares into which shares of Flash Preferred held by each holder could be converted), shall be disregarded.

(c) Common Stock. Each holder of shares of Common Stock shall be entitled to one vote for each share thereof held; *provided, however*, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to the Certificate of Incorporation that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to the Certificate of Incorporation or pursuant to the General Corporation Law.

(d) Adjustment in Authorized Common Stock. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares of Common Stock then outstanding) by (in addition to any vote of the holders of one or more series of Preferred Stock that may be required by the terms of the Certificate of Incorporation) the

affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

6. Reissuance of Flash Preferred. In the event that any shares of Flash Preferred shall be converted pursuant to Section 4 or otherwise repurchased by the Corporation, the shares so converted, redeemed or repurchased shall be cancelled and shall not be issuable by this Corporation.

7. Waiver. Any of the rights, powers, preferences and other terms of the Flash Preferred set forth herein may be waived on behalf of all holders of Flash Preferred by the affirmative written consent or vote of the holders of a majority of the shares of Flash Preferred then outstanding.

8. Notices. Any notice required by the provisions of this ARTICLE V to be given to the holders of Preferred Stock shall be deemed given if deposited in the United States mail, postage prepaid, and addressed to each holder of record at such holder's address appearing on the books of the Corporation, or given by electronic communication in compliance with the provisions of the Delaware General Corporation Law, and shall be deemed sent upon such mailing or electronic transmission.

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

## ARTICLE VI

The Corporation is to have perpetual existence.

## ARTICLE VII

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

## ARTICLE VIII

Unless otherwise set forth herein, the number of directors which constitute the Board of Directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

## ARTICLE IX

In furtherance and not in limitation of the powers conferred by statute, the Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation.

## ARTICLE X

1. To the fullest extent permitted by the Delaware General Corporation Law as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director. If the Delaware General Corporation Law is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the Delaware General Corporation Law, as so amended.

2. The Corporation shall have the power to indemnify, to the extent permitted by the Delaware General Corporation Law, as it presently exists or may hereafter be amended from time to time, any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a “**Proceeding**”) by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

3. Neither any amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Corporation’s Certificate of Incorporation inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X, in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this ARTICLE X, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## ARTICLE XI

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws may provide. The books of the Corporation may be kept (subject to any provision contained in the statutes) outside of the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## ARTICLE XII

1. Any controversy or claim brought directly, derivatively or in a representative capacity by any present or former stockholder of the Corporation as a present or former stockholder, whether against the Corporation, in the name of the Corporation or otherwise, arising out of or relating to any acts or omissions of the Corporation or any of its officers, directors, agents, affiliates, associates, employees or controlling persons (including without limitation any controversy or claim relating to a purchase or sale of securities of the Corporation), shall be settled by arbitration under the Federal Arbitration Act filed with JAMS, Inc. (“JAMS”) and in accordance with the JAMS Comprehensive Arbitration Rules & Procedures of, and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. Any controversy or claim brought by the Corporation against any present or former stockholder of the Corporation in his, her or its capacity as a present or former stockholder shall also be settled by arbitration under the Federal Arbitration Act filed with JAMS and in accordance with the JAMS Comprehensive Arbitration Rules & Procedures and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. In the arbitration proceedings, the parties shall be entitled to all remedies that would be available in the absence of this ARTICLE XII and the arbitrators, in rendering their decision, shall follow the substantive laws that would otherwise be applicable and shall state the basis of their decision. The Arbitrator shall issue a written opinion that includes the factual and legal basis for any decision and award, unless the parties agree otherwise. This ARTICLE XII shall apply, without limitation, to an action arising under any federal or state securities law.

2. The arbitration of any dispute pursuant to this ARTICLE XII shall be held the County in which the Corporation’s principal executive offices are located.

3. NO CONTROVERSY OR CLAIM SUBJECT TO ARBITRATION UNDER THIS ARTICLE XII MAY BE BROUGHT IN A REPRESENTATIVE CAPACITY ON BEHALF OF A CLASS OF STOCKHOLDERS OR FORMER STOCKHOLDERS.

4. Any party, upon submitting a matter to arbitration as required by this ARTICLE XII, may seek a temporary restraining order or preliminary injunction on an individual basis from a court of competent jurisdiction pending the outcome of the arbitration. Notwithstanding the foregoing, this ARTICLE XII shall not apply to any claims to the extent prohibited by law from being arbitrated.

5. The parties to any proceeding may agree not to arbitrate all or part of any controversy or claim, on the selection of arbitrators, and the location and procedures applicable to any proceeding.

6. This ARTICLE XII is intended to benefit the officers, directors, agents, affiliates, associates, employees and controlling persons of the Corporation, each of whom shall be deemed to be a third party beneficiary of this ARTICLE XII, and each of whom may enforce this ARTICLE XII to the full extent that the Corporation could do so if a controversy or claim were brought against it.

7. If any provision or provisions of this ARTICLE XII shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability

of such provisions in any other circumstance and of the remaining provisions of this ARTICLE XII (including, without limitation, each portion of any sentence of this ARTICLE XII containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

**EXHIBIT B**  
**SCHEDULE OF EXCEPTIONS**

Nothing to disclose.

**EXHIBIT C**  
**CAPITALIZATION TABLE**

## Capitalization Table

	Common Shares		Flash Seed Preferred Stock		Post Closing	
	Shares	Options / Warrants*	Shares	Options / Warrants	Fully Diluted	Pct**
<b>Common Stock, Options &amp; Warrants</b>						
Yuri Moreira	691,177	-	-	-	691,177	43.6%
Brian Mann	296,219	-	-	-	296,219	18.7%
Chris Bisson	46,188	-	-	-	46,188	2.9%
Marco Brondani	37,814	-	-	-	37,814	2.4%
Jake Denny	18,907	-	-	-	18,907	1.2%
Ysis Moreira	12,605	-	-	-	12,605	0.8%
Steven Sidi	6,302	-	-	-	6,302	0.4%
Ken Rutkowski	3,151	-	-	-	3,151	0.2%
Jason Losser	3,151	-	-	-	3,151	0.2%
Devon Nuszer	12,605	-	-	-	12,605	0.8%
Chris Bisson (Convertible Note)	8,760	-	-	-	8,760	0.6%
Options Plan, available unissued	-	132,349	-	-	132,349	8.3%
<b>Pre Close Total</b>	<b>1,136,878</b>	<b>132,349</b>	<b>-</b>	<b>-</b>	<b>1,269,227</b>	<b>80.0%</b>
<b>Flash Seed Preferred Stock</b>						
New Investors**	-	-	317,258	-	317,258	20.0%
<b>Flash Seed Preferred Stock</b>	<b>-</b>	<b>-</b>	<b>317,258</b>	<b>-</b>	<b>317,258</b>	<b>20.0%</b>
<b>TOTAL</b>	<b>1,136,878</b>	<b>132,349</b>	<b>317,258</b>	<b>-</b>	<b>1,586,485</b>	<b>100.0%</b>

\* Options Pool to be reserved for issuance prior to closing of the Flash Seed Preferred offering.

\*\* Pro forma, assuming the maximum number of shares are sold.