

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 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): February 10, 2023

VELODYNE LIDAR, INC.

(Exact name of registrant as specified in charter)

Delaware
(State or other jurisdiction
of incorporation)

001-38703
(Commission
File Number)

83-1138508
(IRS Employer
Identification No.)

5521 Hellyer Avenue
San Jose, California
(Address of principal executive offices)

95138
(Zip Code)

(669) 275-2251
(Registrant's telephone number, including area code)

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:

- 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 exchange on which registered
Common stock, \$0.0001 par value	VLDR	The Nasdaq Stock Market LLC
Warrants, each exercisable for three-quarters of one share of common stock	VLDRW	The Nasdaq Stock Market LLC

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter). 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 2.01. Completion of Acquisition or Disposition of Assets.

As previously reported, on November 4, 2022, Velodyne Lidar, Inc., a Delaware corporation (“Velodyne” or the “Company”), Ouster, Inc., a Delaware corporation (“Ouster”), Oban Merger Sub, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Ouster (“Merger Sub I”), and Oban Merger Sub II LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of Ouster (“Merger Sub II”), entered into an Agreement and Plan of Merger (the “Merger Agreement”).

Pursuant to the Merger Agreement, and following the satisfaction or waiver of the conditions specified therein, on February 10, 2023, Merger Sub I merged with and into Velodyne (the “First Merger”), with Velodyne surviving the First Merger as a direct, wholly owned subsidiary of Ouster (the “Surviving Corporation”), and as soon as practicable following the First Merger, the Surviving Corporation merged with and into Merger Sub II, with Merger Sub II surviving as a direct, wholly owned subsidiary of Ouster (the “Surviving Entity” or “Velodyne, LLC”) (the “Second Merger,” and together with the First Merger, the “Mergers”).

At the effective time of the First Merger (the “Effective Time”), (i) each share of common stock, par value \$0.0001 per share, of Velodyne (“Velodyne Common Stock”) issued and outstanding immediately prior to the Effective Time (other than the shares that were owned by Velodyne, Ouster, Merger Sub I or Merger Sub II or any wholly owned subsidiary of Velodyne, Ouster, Merger Sub I or Merger Sub II) was converted into the right to receive 0.8204 (the “Exchange Ratio”) validly issued, fully paid and non-assessable shares of common stock, par value \$0.0001 per share, of Ouster (the “Ouster Common Stock,” and such shares the “Velodyne Common Stock Merger Consideration”) and (ii) each share of preferred stock, par value \$0.0001 per share, of Velodyne (“Velodyne Preferred Stock”) issued and outstanding immediately prior to the Effective Time (other than the shares that were owned by Velodyne, Ouster, Merger Sub I or Merger Sub II or any wholly owned subsidiary of Velodyne, Ouster, Merger Sub I or Merger Sub II) was cancelled for no consideration. No fractional shares of Ouster Common Stock were issued in the Mergers, and Velodyne stockholders received cash in lieu of fractional shares as part of the Velodyne Common Stock Merger Consideration, as specified in the Merger Agreement. Each share of Ouster Common Stock issued upon conversion of a share of Velodyne Common Stock, as described in this paragraph, that was subject to a substantial risk of forfeiture within the meaning of Section 83 of the Internal Revenue Code of 1986, as amended (“Velodyne Restricted Stock”) is subject to the same substantial risk of forfeiture and has the same terms and conditions, including vesting, as applied to the Velodyne Restricted Stock immediately prior to the Effective Time (“Ouster Restricted Stock”), except that any performance goals applicable to Velodyne Restricted Stock were deemed achieved at the greater of target and actual performance and, as of the Effective Time, the Ouster Restricted Stock issued on conversion of Velodyne Restricted Stock that was originally scheduled to vest based on performance goals became subject solely to the service-based vesting schedule otherwise applicable to the Velodyne Restricted Stock.

The Exchange Ratio resulted in Velodyne equityholders and Ouster equityholders owning approximately 50% and 50%, respectively, of the fully diluted shares of Ouster Common Stock as of the effective date of the Merger Agreement.

Also at the Effective Time, outstanding warrants to purchase shares of Velodyne Common Stock (“Velodyne Warrants”) were assumed by Ouster and converted into warrants to purchase shares of Ouster Common Stock (“Ouster Warrants”) under the same terms and conditions as applied to such Velodyne Warrants as of immediately prior to the Effective Time; however, the Ouster Warrants cover a number of shares of Ouster Common Stock equal to the product of the number of shares of Velodyne Common Stock subject to each such converted Velodyne Warrant and the Exchange Ratio, rounded down to the nearest whole share, and have an exercise price per share equal to the amount obtained by dividing the per share exercise price of each such converted Velodyne Warrant by the Exchange Ratio, rounded up to the nearest whole cent.

At the Effective Time, all outstanding options to acquire shares of Velodyne Common Stock (“Velodyne Options”) held by individuals who are eligible to be included as an “employee” in a registration statement filed on Form S-8 immediately following the Effective Time (“Continuing Service Providers”) were assumed by Ouster and converted into stock options to purchase shares of Ouster Common Stock (“Ouster Options”) with the same terms and conditions as applied to the options immediately prior to the Effective Time; however, each Ouster Option covers a number of shares of Ouster Common Stock equal to the product of the number of shares of Velodyne Common Stock subject to the assumed Velodyne Options and the Exchange Ratio, rounded down to the nearest whole share, and has an exercise price per share equal to the amount obtained by dividing the per-share exercise price of the assumed Velodyne Options by the Exchange Ratio, rounded up to the nearest cent. Each Velodyne Option that was not held by a Continuing Service Provider was terminated immediately prior to the Effective Time for no consideration.

At the Effective Time, all outstanding awards of Velodyne restricted stock units (“Velodyne RSU Awards”) held by Continuing Service Providers were converted into awards of Ouster restricted stock units (“Ouster RSU Awards”) with the same terms and conditions as applied to the Velodyne RSU Awards immediately prior to the Effective Time; however, each Ouster RSU Award covers a number of shares of Ouster Common Stock equal to the product of the number of shares of Velodyne Common Stock subject to the converted Velodyne RSU Award and the Exchange Ratio, rounded down to the nearest whole share. Each Velodyne RSU Award that was not held by a Continuing Service Provider was terminated immediately prior to the Effective Time for no consideration.

All shares of Velodyne Restricted Stock and all Velodyne RSU Awards held by non-employee members of the Velodyne board of directors vested in full and became free of any restrictions, including any risk of forfeiture, as of the Effective Time and were treated as shares of Velodyne Common Stock under the Merger Agreement.

The foregoing summary does not purport to be a complete description and is qualified in its entirety by reference to the full text of the Merger Agreement, which is attached hereto as Exhibit 2.1 and is incorporated herein by reference.

The Merger Agreement has been attached as an exhibit to this report to provide investors and security holders with information regarding its terms. It is not intended to provide any other factual information about Velodyne or Ouster or to modify or supplement any factual disclosures about Velodyne or Ouster in their public reports filed with the Securities and Exchange Commission (the “SEC”). The Merger Agreement includes representations, warranties and covenants of Velodyne and Ouster made solely for the purposes of the Merger Agreement and which may be subject to important qualifications and limitations agreed to by Velodyne and Ouster in connection with the negotiated terms of the Merger Agreement. Moreover, some of those representations and warranties may not be accurate or complete as of any specified date, may be subject to certain disclosures between the parties and a contractual standard of materiality different from those generally applicable to Velodyne’s or Ouster’s SEC filings. In addition, the representations and warranties were made for purposes of allocating risk among the parties to the Merger Agreement and should not be relied upon as establishing factual matters.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

The information contained in Item 2.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.01.

On February 10, 2023, the Company notified the Nasdaq Global Select Market (“Nasdaq”) of the consummation of the Mergers and that each outstanding share of Velodyne Common Stock had been converted into the right to receive the Velodyne Common Stock Merger Consideration. The Company requested that Nasdaq (i) halt trading of the Velodyne Common Stock on Nasdaq at the end of trading on February 10, 2023, (ii) withdraw the Velodyne Common Stock from listing on Nasdaq and (iii) file with the SEC a Notification of Removal from Listing and/or Registration under Section 12(b) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), on Form 25 to report that the Velodyne Common Stock is no longer listed on Nasdaq and to apply for the deregistration of all Velodyne securities under Section 12(b) of the Exchange Act. As a result, the shares of Velodyne Common Stock, which previously traded under the symbol “VLDR,” and the Velodyne Warrants that previously traded under the symbol “VLDRW” will no longer be listed on Nasdaq.

In addition, the Company intends to file a certification on Form 15 with the SEC to suspend the Company’s reporting obligations under Sections 13 and 15(d) of the Exchange Act.

Item 3.03 Material Modification to Rights of Security Holders.

The information contained in Item 2.01, Item 3.01 and Item 5.01 of this Current Report on Form 8-K is incorporated by reference into this Item 3.03.

Item 5.01 Changes in Control of Registrant.

The information contained in Item 2.01, Item 3.01 and Item 5.02 of this Current Report on Form 8-K is incorporated by reference into this Item 5.01.

As a result of the consummation of the Mergers on February 10, 2023, at the Effective Time, a change in control of the Company occurred and the Company ceased to exist as a separate corporate entity with the Surviving Entity continuing on as a wholly owned subsidiary of Ouster.

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

The information contained in Item 2.01 and Item 5.01 of this Current Report on Form 8-K is incorporated by reference into this Item 5.02.

As a result of the First Merger, each of Virginia Boulet, Ernie Maddock, Andy Mattes, Kristin Slanina, Ted Tewksbury and Hamid Zarringhalam ceased to be directors of the Company as of the Effective Time, and the directors of Merger Sub I as of immediately prior to the Effective Time became the directors of the Surviving Corporation. As a result of the Second Merger, the managing member of the Surviving Entity is the Person (as defined in the Merger Agreement) who was the managing member of Merger Sub II as of immediately prior to such time as the Second Merger became effective (the “Second Effective Time”).

As a result of the First Merger, each of the Company’s executive officers as of immediately prior to the Effective Time ceased to be officers of the Company, and the officers of Merger Sub I became the officers of the Surviving Corporation. As a result of the Second Merger, the officers of the Surviving Entity are the individuals who were officers of Merger Sub II as of immediately prior to the Second Effective Time.

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

Pursuant to the Merger Agreement, at the Effective Time, the certificate of incorporation and the bylaws of the Company were amended and restated in their entirety to be in the form of the certificate of incorporation and bylaws, respectively, of the Surviving Corporation. Copies of the amended and restated certificate of incorporation and bylaws are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

As of the Second Effective Time, the certificate of formation and the limited liability company agreement of the Surviving Entity were amended and restated in their entirety to be in the form of the certificate of formation and limited liability company agreement of Merger Sub II in effect as of immediately prior to the Second Effective Time, subject to certain changes as set forth in the Merger Agreement. Copies of the amended and restated certificate of formation and limited liability company agreement are filed as Exhibits 3.3 and 3.4, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
2.1	Agreement and Plan of Merger, dated as of November 4, 2022, by and among Velodyne Lidar, Inc., Ouster, Inc., Oban Merger Sub, Inc. and Oban Merger Sub II LLC (incorporated herein by reference to Exhibit 2.1 to Velodyne’s Current Report on Form 8-K filed with the SEC on November 7, 2022).
3.1	Amended and Restated Certificate of Incorporation of Velodyne Lidar, Inc.
3.2	Amended and Restated Bylaws of Velodyne Lidar, Inc.
3.3	Amended and Restated Certificate of Formation of Velodyne, LLC
3.4	Amended and Restated Limited Liability Company Agreement of Velodyne, LLC
104	Cover Page Interactive Data File (formatted as inline XBRL document)

SIGNATURE

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.

VELODYNE, LLC, as successor by merger to Velodyne Lidar, Inc.

By: /s/ Angus Pacala

Name: Angus Pacala

Title: President

Date: February 10, 2023

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
VELODYNE LIDAR, INC.**

ARTICLE I: NAME

The name of the corporation is **Velodyne Lidar, Inc.** (the “*Corporation*”).

ARTICLE II: AGENT FOR SERVICE OF PROCESS

The address of the registered office of the Corporation in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, State of Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

ARTICLE III: PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware, as the same exists or may hereafter be amended (the “*DGCL*”) or any successor statute.

ARTICLE IV: AUTHORIZED STOCK

The total number of shares of stock that the Corporation has authority to issue is 100 shares, all of which shall be common stock, \$0.0001 par value per share.

ARTICLE V: AMENDMENT OF BYLAWS

The board of directors of the Corporation shall have the power to adopt, amend or repeal bylaws of the Corporation.

ARTICLE VI: VOTE BY BALLOT

Election of directors need not be by written ballot unless the bylaws of the Corporation shall so provide.

ARTICLE VII: DIRECTOR LIABILITY

To the fullest extent permitted by law, no director of the Corporation shall be personally liable for monetary damages for breach of fiduciary duty as a director. Without limiting the effect of the preceding sentence, if the DGCL is hereafter amended to authorize the further elimination or limitation of the liability of a director, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of this Certificate of Incorporation inconsistent with this Article VII, shall eliminate, reduce or

otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing at the time of such amendment, repeal or adoption of such an inconsistent provision.

ARTICLE VIII: INDEMNIFICATION

To the fullest extent permitted by law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers and agents of the Corporation (and any other persons to which applicable law permits the Corporation to provide indemnification) through bylaw provisions, agreements with such agents or other persons, vote of stockholders or disinterested directors or otherwise in excess of the indemnification and advancement otherwise permitted by such applicable law. Any repeal or modification of this provision shall not adversely affect any right or protection hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification.

ARTICLE IX: AMENDMENT OF CERTIFICATE OF INCORPORATION

Subject to such limitations as may be from time to time imposed by other provisions of this Certificate of Incorporation, by the bylaws of the Corporation, by the DGCL or other applicable law, or by any contract or agreement to which the Corporation is or may become a party, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this express reservation.

AMENDED AND RESTATED

BYLAWS

OF

VELODYNE LIDAR, INC.

As adopted on February 10, 2023

AMENDED AND RESTATED

BYLAWS OF

VELODYNE LIDAR, INC.

(a Delaware corporation)

TABLE OF CONTENTS

	Page
Article I OFFICES	1
1.1 Registered Office	1
1.2 Offices	1
Article II MEETINGS OF STOCKHOLDERS	1
2.1 Location	1
2.2 Timing	1
2.3 Notice of Meeting	1
2.4 Stockholders' Records	1
2.5 Special Meetings	2
2.6 Notice of Meeting	2
2.7 Business Transacted at Special Meeting	2
2.8 Quorum; Meeting Adjournment; Presence by Remote Means	2
2.9 Voting Thresholds	3
2.10 Number of Votes Per Share	3
2.11 Action by Written Consent of Stockholders; Electronic Consent; Notice of Action	3
Article III DIRECTORS	4
3.1 Authorized Directors	4
3.2 Vacancies	4
3.3 Board Authority	5
3.4 Location of Meetings	5
3.5 First Meeting	5
3.6 Regular Meetings	5
3.7 Special Meetings	5
3.8 Quorum	5
3.9 Action Without a Meeting	6
3.10 Telephonic Meetings	6
3.11 Committees	6
3.12 Minutes of Meetings	6
3.13 Compensation of Directors	6
3.14 Removal of Directors	6

Article IV NOTICES	7
4.1 Notice	7
4.2 Waiver of Notice	7
4.3 Electronic Notice	7
Article V OFFICERS	8
5.1 Required and Permitted Officers	8
5.2 Appointment of Required Officers	8
5.3 Appointment of Permitted Officers	8
5.4 Officer Compensation	8
5.5 Term of Office; Vacancies	8
5.6 Chairman Presides	8
5.7 Absence of Chairman	8
5.8 Powers of President	8
5.9 President's Signature Authority	9
5.10 Absence of President	9
5.11 Duties of Secretary	9
5.12 Duties of Assistant Secretary	9
5.13 Duties of Treasurer	9
5.14 Disbursements and Financial Reports	9
5.15 Treasurer's Bond	10
5.16 Duties of Assistant Treasurer	10
Article VI CERTIFICATE OF STOCK	10
6.1 Stock Certificates	10
6.2 Facsimile Signatures	11
6.3 Lost Certificates	11
6.4 Transfer of Stock	11
6.5 Fixing a Record Date	11
6.6 Registered Stockholders	11
Article VII GENERAL PROVISIONS	12
7.1 Dividends	12
7.2 Reserve for Dividends	12
7.3 Checks	12
7.4 Fiscal Year	12
7.5 Corporate Seal	12
7.6 Indemnification	12
7.7 Conflicts with Certificate of Incorporation	13
Article VIII AMENDMENTS	13
Article IX LOANS TO OFFICERS	14
Article X RECORDS AND REPORTS	14

**AMENDED AND RESTATED
BYLAWS
OF
VELODYNE LIDAR, INC.**

**ARTICLE I
OFFICES**

1.1 Registered Office. The registered office shall be in the City of Wilmington, County of New Castle, State of Delaware.

1.2 Offices. The corporation may also have offices at such other places both within and without the State of Delaware as the board of directors of the Company (the “*Board*”) may from time to time determine or the business of the corporation may require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

2.1 Location. All meetings of the stockholders for the election of directors shall be held at any place within or outside the State of Delaware as shall be designated from time to time by the Board and stated in the notice of the meeting; provided that the Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211 of the Delaware General Corporations Law (the “*DGCL*”). Meetings of stockholders for any other purpose may be held at such time and place, if any, within or outside the State of Delaware, as shall be stated in the notice of the meeting or in a duly executed waiver of notice thereof, or a waiver by electronic transmission by the person entitled to notice.

2.2 Timing. Annual meetings of stockholders, commencing with the year 2022, shall be held at such date and time as shall be designated from time to time by the Board and stated in the notice of the meeting, at which they shall elect by a plurality vote a Board, and transact such other business as may properly be brought before the meeting.

2.3 Notice of Meeting. Written notice of any stockholder meeting stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, shall be given to each stockholder entitled to vote at such meeting not fewer than 10 nor more than 60 days before the date of the meeting.

2.4 Stockholders’ Records. The officer who has charge of the stock ledger of the corporation shall prepare and make, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address (but not the electronic address or other electronic contact information) of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least 10 days prior to the meeting: (i) on a reasonably accessible electronic network; provided that the information required to gain access to such list is provided with the

notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

2.5 Special Meetings. Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the certificate of incorporation, may be called by the president and shall be called by the president or secretary at the request in writing of a majority of the Board, or at the request in writing of stockholders owning at least 50% in amount of the entire capital stock of the corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting.

2.6 Notice of Meeting. Written notice of a special meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called, shall be given not fewer than 10 nor more than 60 days before the date of the meeting, to each stockholder entitled to vote at such meeting. The means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting shall also be provided in the notice.

2.7 Business Transacted at Special Meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.8 Quorum; Meeting Adjournment; Presence by Remote Means.

(a) *Quorum; Meeting Adjournment.* The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by statute or by the certificate of incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted that might have been transacted at the meeting as originally notified. If the adjournment is for more than 30 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

(b) *Presence by Remote Means.* If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) participate in a meeting of stockholders; and

(ii) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication; provided that (i) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

2.9 Voting Thresholds. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the statutes or of the certificate of incorporation, a different vote is required, in which case such express provision shall govern and control the decision of such question.

2.10 Number of Votes Per Share. Unless otherwise provided in the certificate of incorporation, each stockholder shall at every meeting of the stockholders be entitled to one vote by such stockholder or by proxy for each share of the capital stock having voting power held by such stockholder, but no proxy shall be voted on after three years from its date, unless the proxy provides for a longer period.

2.11 Action by Written Consent of Stockholders; Electronic Consent; Notice of Action.

(a) *Action by Written Consent of Stockholders.* Unless otherwise provided by the certificate of incorporation, any action required or permitted to be taken at any annual or special meeting of the stockholders may be taken without a meeting, without prior notice and without a vote, if a consent in writing setting forth the action so taken, is signed in a manner permitted by law by the holders of outstanding stock having not less than the number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Written stockholder consents shall bear the date of signature of each stockholder who signs the consent in the manner permitted by law and shall be delivered to the corporation as provided in Section 2.11(b). No written consent shall be effective to take the action set forth therein unless, within 60 days of the earliest dated consent delivered to the corporation in the manner provided above, written consents signed by a sufficient number of stockholders to take the action set forth therein are delivered to the corporation in the manner provided above.

(b) *Electronic Consent.* A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, or a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section; provided that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. The date on which such telegram, cablegram or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to a corporation's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission may be otherwise delivered to the principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the Board.

(c) *Notice of Action.* Prompt notice of any action taken pursuant to this Section 2.11 shall be provided to the stockholders in accordance with Section 228(e) of the DGCL.

ARTICLE III DIRECTORS

3.1 **Authorized Directors.** The number of directors that shall constitute the whole Board shall consist of up to three (3) directors and shall be determined by resolution of the Board or by the stockholders at the annual meeting of the stockholders, except as provided in Section 3.2, and each director elected shall hold office until his successor is elected and qualified. Directors need not be stockholders.

3.2 **Vacancies.** Unless otherwise provided in the corporation's certificate of incorporation, as it may be amended, vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the next annual election and until their successors are duly elected and shall qualify, unless sooner displaced. If there are no directors in office, then an election of directors may be held in the manner provided by statute. If, at the time of filling any vacancy or any newly created directorship, the directors then in office shall constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), the Court of Chancery may, upon application of any stockholder or stockholders holding at least 10% of the total number of the shares at the time outstanding having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office.

3.3 Board Authority. The business of the corporation shall be managed by or under the direction of the Board, which may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the certificate of incorporation or by these Bylaws directed or required to be exercised or done by the stockholders.

3.4 Location of Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware.

3.5 First Meeting. The first meeting of each newly elected Board shall be held at such time and place as shall be fixed by the vote of the stockholders at the annual meeting and no notice of such meeting shall be necessary to the newly elected directors in order to legally constitute the meeting; provided that a quorum shall be present. In the event of the failure of the stockholders to fix the time or place of such first meeting of the newly elected Board, or in the event such meeting is not held at the time and place so fixed by the stockholders, the meeting may be held at such time and place as shall be specified in a notice given as hereinafter provided for special meetings of the Board, or as shall be specified in a written waiver signed by all of the directors.

3.6 Regular Meetings. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

3.7 Special Meetings. Special meetings of the Board may be called by the president upon notice to each director; special meetings shall be called by the president or secretary in like manner and on like notice on the written request of two directors unless the Board consists of only one director, in which case special meetings shall be called by the president or secretary in like manner and on like notice on the written request of the sole director. Notice of any special meeting shall be given to each director at his business or residence in writing, or by telegram, facsimile transmission, telephone communication or electronic transmission; provided that, with respect to electronic transmission, the director has consented to receive the form of transmission at the address to which it is directed). If mailed, such notice shall be deemed adequately delivered when deposited in the United States mails so addressed, with postage thereon prepaid, at least five days before such meeting. If by telegram, such notice shall be deemed adequately delivered when the telegram is delivered to the telegraph company at least 24 hours before such meeting. If by facsimile transmission or other electronic transmission, such notice shall be transmitted at least 24 hours before such meeting. If by telephone, the notice shall be given at least 12 hours prior to the time set for the meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board needs be specified in the notice of such meeting, except for amendments to these Bylaws as provided under Article VIII. A meeting may be held at any time without notice if all the directors are present (except as otherwise provided by law) or if those not present waive notice of the meeting in writing, either before or after such meeting.

3.8 Quorum. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business and any act of a majority of the directors present at any meeting at which there is a quorum shall be an act of the Board, except as may be otherwise specifically provided by statute or by the certificate of incorporation. If a quorum is not present at any meeting of the Board, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.9 Action Without a Meeting. Unless otherwise restricted by the certificate of incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing, writings, electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee.

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

3.11 Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee.

In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member.

Any such committee, to the extent provided in the resolution of the Board, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers that may require it, but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (ii) adopting, amending or repealing any provision of these Bylaws.

3.12 Minutes of Meetings. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

3.13 Compensation of Directors. Unless otherwise restricted by the certificate of incorporation or these Bylaws, the Board shall have the authority to fix the compensation of directors. The directors may be paid their expenses, if any, of attendance at each meeting of the Board and may be paid a fixed sum for attendance at each meeting of the Board or a stated salary as director. No such payment shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

3.14 Removal of Directors. Unless otherwise provided by the certificate of incorporation or these Bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of shares entitled to vote at an election of directors.

**ARTICLE IV
NOTICES**

4.1 Notice. Unless otherwise provided in these Bylaws, whenever, under the provisions of the statutes or of the certificate of incorporation or of these Bylaws, notice is required to be given to any director or stockholder, it shall not be construed to mean personal notice, but such notice may be given in writing, by mail, addressed to such director or stockholder, at his address as it appears on the records of the corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Notice to directors may also be given by telegram.

4.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of the statutes or of the certificate of incorporation or of these Bylaws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

4.3 Electronic Notice.

(a) *Electronic Transmission.* Without limiting the manner by which notice otherwise may be given effectively to stockholders and directors, any notice to stockholders or directors given by the corporation under any provision of the DGCL, the certificate of incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder or director to whom the notice is given. Any such consent shall be revocable by the stockholder or director by written notice to the corporation. Any such consent shall be deemed revoked if (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided that the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) *Effective Date of Notice.* Notice given pursuant to Section 4.3(a) shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder or director has consented to receive notice, (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder or director has consented to receive notice, (iii) if by a posting on an electronic network together with separate notice to the stockholder or director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice and (iv) if by any other form of electronic transmission, when directed to the stockholder or director. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) *Form of Electronic Transmission.* For purposes of these Bylaws, "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

**ARTICLE V
OFFICERS**

5.1 **Required and Permitted Officers.** The officers of the corporation shall be chosen by the Board and shall be a president, a treasurer and a secretary. The Board may elect from among its members a Chairman of the Board and a Vice-Chairman of the Board. The Board may also choose one or more vice-presidents, assistant secretaries and assistant treasurers. Any number of offices may be held by the same person, unless the certificate of incorporation or these Bylaws otherwise provide.

5.2 **Appointment of Required Officers.** The Board at its first meeting after each annual meeting of stockholders shall choose a president, a treasurer, and a secretary and may choose vice-presidents.

5.3 **Appointment of Permitted Officers.** The Board may appoint such other officers and agents as it shall deem necessary who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

5.4 **Officer Compensation.** The salaries of all officers and agents of the corporation shall be fixed by the Board.

5.5 **Term of Office; Vacancies.** The officers of the corporation shall hold office until their successors are chosen and qualify. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board. Any vacancy occurring in any office of the corporation shall be filled by the Board.

THE CHAIRMAN OF THE BOARD

5.6 **Chairman Presides.** The Chairman of the Board, if any, shall preside at all meetings of the Board and of the stockholders at which he or she shall be present. He or she shall have and may exercise such powers as are, from time to time, assigned to him by the Board and as may be provided by law.

5.7 **Absence of Chairman.** In the absence of the Chairman of the Board, the Vice-Chairman of the Board, if any, shall preside at all meetings of the Board and of the stockholders at which he or she shall be present. He or she shall have and may exercise such powers as are, from time to time, assigned to him by the Board and as may be provided by law.

THE PRESIDENT AND VICE-PRESIDENTS

5.8 **Powers of President.** The president shall be the chief executive officer of the corporation; in the absence of the Chairman and Vice-Chairman of the Board he or she shall preside at all meetings of the stockholders and the Board; he or she shall have general and active management of the business of the corporation and shall see that all orders and resolutions of the Board are carried into effect.

5.9 President's Signature Authority. The president shall execute bonds, mortgages and other contracts requiring a seal, under the seal of the corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the corporation.

5.10 Absence of President. In the absence of the president or in the event of his inability or refusal to act, the vice-president, if any, (or in the event there be more than one vice-president, the vice-presidents in the order designated by the directors, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the Board may from time to time prescribe.

THE SECRETARY AND ASSISTANT SECRETARY

5.11 Duties of Secretary. The secretary shall attend all meetings of the Board and all meetings of the stockholders and record all the proceedings of the meetings of the corporation and of the Board in a book to be kept for that purpose and shall perform like duties for the standing committees when required. He or she shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board, and shall perform such other duties as may be prescribed by the Board or president, under whose supervision he or she shall be. He or she shall have custody of the corporate seal of the corporation and he or she, or an assistant secretary, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by his signature or by the signature of such assistant secretary. The Board may give general authority to any other officer to affix the seal of the corporation and to attest the affixing by his signature.

5.12 Duties of Assistant Secretary. The assistant secretary, or if there be more than one, the assistant secretaries in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the secretary or in the event of his inability or refusal to act, perform the duties and exercise the powers of the secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

THE TREASURER AND ASSISTANT TREASURERS

5.13 Duties of Treasurer. The treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board.

5.14 Disbursements and Financial Reports. He or she shall disburse the funds of the corporation as may be ordered by the Board, taking proper vouchers for such disbursements, and shall render to the president and the Board, at its regular meetings or when the Board so requires, an account of all his transactions as treasurer and of the financial condition of the corporation.

5.15 **Treasurer's Bond.** If required by the Board, the treasurer shall give the corporation a bond (which shall be renewed every six years) in such sum and with such surety or sureties as shall be satisfactory to the Board for the faithful performance of the duties of his office and for the restoration to the corporation, in case of his death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession or under his control belonging to the corporation.

5.16 **Duties of Assistant Treasurer.** The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the treasurer or in the event of the treasurer's inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

ARTICLE VI CERTIFICATE OF STOCK

6.1 **Stock Certificates.** Every holder of stock in the corporation shall be entitled to have a certificate, signed by or in the name of the corporation by, the Chairman or Vice-Chairman of the Board, or the president or a vice-president and the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the corporation, certifying the number of shares owned by him in the corporation; provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares.

Certificates may be issued for partly paid shares and in such case upon the face or back of the certificates issued to represent any such partly paid shares, the total amount of the consideration to be paid therefor, and the amount paid thereon shall be specified.

If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualification, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock, a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

6.2 Facsimile Signatures. Any or all of the signatures on the certificate may be facsimile. In the event that any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, the certificate may be issued by the corporation with the same effect as if such officer, transfer agent or registrar were still acting as such at the date of issue.

6.3 Lost Certificates. The Board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require and/or to give the corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

6.4 Transfer of Stock. Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books.

6.5 Fixing a Record Date. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date that shall not be more than 60 nor less than 10 days before the date of such meeting, nor more than 60 days prior to any other action. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided that the Board may fix a new record date for the adjourned meeting.

6.6 Registered Stockholders. The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, to vote as such owner, to hold liable for calls and assessments a person registered on its books as the owner of shares and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

**ARTICLE VII
GENERAL PROVISIONS**

7.1 **Dividends.** Dividends upon the capital stock of the corporation, if any, subject to the provisions of the certificate of incorporation, may be declared by the Board at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property or in shares of the capital stock, subject to the provisions of the certificate of incorporation.

7.2 **Reserve for Dividends.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the directors from time to time, in their sole discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purposes as the directors think conducive to the interests of the corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

7.3 **Checks.** All checks or demands for money and notes of the corporation shall be signed by such officer or officers or such other person or persons as the Board may from time to time designate.

7.4 **Fiscal Year.** The fiscal year of the corporation shall be fixed by resolution of the Board.

7.5 **Corporate Seal.** The Board may adopt a corporate seal having inscribed thereon the name of the corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

7.6 **Indemnification.** The corporation shall, to the fullest extent authorized under the laws of the State of Delaware, as those laws may be amended and supplemented from time to time, indemnify any director made, or threatened to be made, a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of being a director of the corporation or a predecessor corporation or a director or officer of another corporation, if such person served in such position at the request of the corporation; provided, that the corporation shall indemnify any such director or officer in connection with a proceeding initiated by such director or officer only if such proceeding was authorized by the Board of the corporation. The indemnification provided for in this Section 7.6 shall: (i) not be deemed exclusive of any other rights to which those indemnified may be entitled under these Bylaws, agreement or vote of stockholders or disinterested directors or otherwise, both as to action in their official capacities and as to action in another capacity while holding such office, (ii) continue as to a person who has ceased to be a director and (iii) inure to the benefit of the heirs, executors and administrators of a person who has ceased to be a director. The corporation's obligation to provide indemnification under this Section 7.6 shall be offset to the extent of any other source of indemnification or any otherwise applicable insurance coverage under a policy maintained by the corporation or any other person.

Expenses incurred by a director of the corporation in defending a civil or criminal action, suit or proceeding by reason of the fact that he or she is or was a director of the corporation (or was serving at the corporation's request as a director or officer of another corporation) shall be paid by the corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the

corporation as authorized by relevant sections of the DGCL. Notwithstanding the foregoing, the corporation shall not be required to advance such expenses to an agent who is a party to an action, suit or proceeding brought by the corporation and approved by a majority of the Board of the corporation that alleges willful misappropriation of corporate assets by such agent, disclosure of confidential information in violation of such agent's fiduciary or contractual obligations to the corporation or any other willful and deliberate breach in bad faith of such agent's duty to the corporation or its stockholders.

The foregoing provisions of this Section 7.6 shall be deemed to be a contract between the corporation and each director who serves in such capacity at any time while this bylaw is in effect, and any repeal or modification thereof shall not affect any rights or obligations then existing with respect to any state of facts then or theretofore existing or any action, suit or proceeding theretofore or thereafter brought based in whole or in part upon any such state of facts.

The Board in its sole discretion shall have power on behalf of the corporation to indemnify any person, other than a director, made a party to any action, suit or proceeding by reason of the fact that he or she, his testator or intestate, is or was an officer or employee of the corporation.

To assure indemnification under this Section 7.6 of all directors, officers and employees who are determined by the corporation or otherwise to be or to have been "fiduciaries" of any employee benefit plan of the corporation that may exist from time to time, Section 145 of the DGCL shall, for the purposes of this Section 7.6, be interpreted as follows: an "other enterprise" shall be deemed to include such an employee benefit plan, including any plan of the corporation that is governed by the Act of Congress entitled "Employee Retirement Income Security Act of 1974," as amended from time to time; the corporation shall be deemed to have requested a person to serve the corporation for purposes of Section 145 of the DGCL, as administrator of an employee benefit plan where the performance by such person of his duties to the corporation also imposes duties on, or otherwise involves services by, such person to the plan or participants or beneficiaries of the plan; excise taxes assessed on a person with respect to an employee benefit plan pursuant to such Act of Congress shall be deemed "fines."

CERTIFICATE OF INCORPORATION GOVERNS

7.7 Conflicts with Certificate of Incorporation. In the event of any conflict between the provisions of the corporation's certificate of incorporation and these Bylaws, the provisions of the certificate of incorporation shall govern.

ARTICLE VIII AMENDMENTS

These Bylaws may be altered, amended or repealed, or new bylaws may be adopted by the stockholders or by the Board, when such power is conferred upon the Board by the certificate of incorporation at any regular meeting of the stockholders or of the Board or at any special meeting of the stockholders or of the Board if notice of such alteration, amendment, repeal or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend or repeal bylaws is conferred upon the Board by the certificate of incorporation, it shall not divest or limit the power of the stockholders to adopt, amend or repeal bylaws.

**ARTICLE IX
LOANS TO OFFICERS**

The corporation may lend money to, or guarantee any obligation of or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured or secured in such manner as the Board shall approve, including a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

**ARTICLE X
RECORDS AND REPORTS**

The application and requirements of Section 1501 of the California General Corporation Law are hereby expressly waived to the fullest extent permitted thereunder.

AMENDED AND RESTATED CERTIFICATE OF FORMATION

OF

VELODYNE, LLC

February 10, 2023

This Amended and Restated Certificate of Formation of Velodyne, LLC (the "Company") is being duly executed and filed by the undersigned, as an authorized person, to form a limited liability company under the Delaware Limited Liability Company Act (6 Del.C. §18-101, et seq.).

ARTICLE ONE

Name

The name of the Company formed hereby is Velodyne, LLC.

ARTICLE TWO

Initial Registered Office and Agent

The address of the registered office of the Company in the State of Delaware is 1209 Orange Street, Wilmington, County of New Castle, State of Delaware, 19801. The name of the registered agent of the Company in the State of Delaware at such address is The Corporation Trust Company.

ARTICLE THREE

Effective Date

This Amended and Restated Certificate of Formation shall be effective on the date of filing.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

**AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
VELODYNE, LLC**

This Amended and Restated Limited Liability Company Agreement of Velodyne, LLC, a Delaware limited liability company (the “Company”), is made and entered into as of February 10, 2023, by Ouster, Inc., a Delaware corporation, in its capacity as the sole and managing member of the Company (any Person serving in such capacity, the “Managing Member”).

WITNESSETH:

WHEREAS, the Company was formed as a limited liability company pursuant to the Certificate of Formation of the Company filed with the Secretary of State of the State of Delaware on November 1, 2022, (the “Certificate”) in accordance with the provisions of the Delaware Limited Liability Company Act (Title 6 of the Delaware Code, Section 18-101, et seq., together with any successor statute, as amended from time to time, the “Act”);

WHEREAS, the Company and the Managing Member entered into that certain Limited Liability Company Agreement of the Company, dated as of November 1, 2022 (the “Original LLC Agreement”);

WHEREAS, on November 4, 2022, the Managing Member, the Company, Oban Merger Sub, Inc., a Delaware corporation (“Merger Sub I”), Velodyne Lidar, Inc., a Delaware corporation (“Velodyne”) entered into that certain Agreement and Plan of Merger (the “Merger Agreement”), pursuant to which, among other things, (i) Merger Sub I shall be merged with and into Velodyne (the “First Merger”), with Velodyne as the surviving entity in the First Merger and continuing as a wholly owned subsidiary of the Managing Member, and (ii) as soon as practicable following the First Merger, Velodyne shall merge with and into the Company, with the Company surviving as the surviving entity and a wholly owned subsidiary of the Managing Member (the “Second Merger”, and, together with the First Merger and the other transactions contemplated by the Merger Agreement, the “Transactions”); and

WHEREAS, in connection with the closing of the Transactions contemplated by the Merger Agreement, the Managing Member desires to amend and restate the Original LLC Agreement in its entirety to read as follows:

ARTICLE I.
DEFINITIONS AND INTERPRETATION

1.1 Definitions. Terms used herein without definition (such as, “member,” “manager” and “limited liability company interest”) shall have the meanings given thereto in the Act. The following terms have the definitions hereinafter indicated whenever used in this Agreement with initial capital letters.

“Act” has the meaning set forth in the recitals of this Agreement.

“Agreement” means this Limited Liability Company Agreement, as amended from time to time in accordance with its terms and the applicable provisions of the Act.

“Certificate” has the meaning set forth in the recitals of this Agreement.

“Claim” has the meaning set forth in Section 7.5.

“Company” has the meaning set forth in the preamble of this Agreement.

“Covered Person” has the meaning set forth in Section 7.1.

“Liquidating Trustee” means the Managing Member or such other Person appointed by the Managing Member to serve as the liquidating trustee of the Company.

“Losses” has the meaning set forth in Section 7.5.

“Managing Member” has the meaning set forth in the preamble of this Agreement.

“Membership Interest” means the limited liability company interest in the Company having all rights and obligations (economic and otherwise) to which a holder thereof may be entitled pursuant to this Agreement and the Act.

“Person” means any natural person, corporation, limited partnership, general partnership, limited liability company, joint stock company, joint venture, association, company, estate, trust, or other organization or entity, whether or not a legal entity, custodian, trustee-executor, administrator, nominee or entity in a representative capacity, or any government or agency or political subdivision thereof.

1.2 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

1.3 Headings. The headings in this Agreement are inserted for convenience only and are in no way intended to describe, interpret, define, or limit the scope, extent or intent of this Agreement or any provision hereof.

1.4 Conflicts. In the event of a direct conflict between the provisions of this Agreement and the mandatory provisions of the Act or any provision of the Certificate of Formation, the Act and the Certificate of Formation, in that order of priority, shall control.

ARTICLE II. ORGANIZATIONAL MATTERS

2.1 Name. The name of the Company is “Velodyne, LLC”.

2.2 Principal Place of Business. The principal place of business of the Company shall be c/o Ouster, Inc., 350 Treat Avenue, San Francisco, California 94110, of which the Company is a wholly-owned subsidiary, or such other place as the Managing Member may from time to time designate.

2.3 Registered Office and Registered Agent. The name and office of the registered agent of the Company shall be the name and office of the initial registered agent of the Company reflected in the Certificate, or such other name or place as the Managing Member may from time to time designate. The registered office and registered agent may be changed from time to time by filing the address of the new registered office and/or the name of the new registered agent with the Secretary of State of the State of Delaware pursuant to the Act.

2.4 Term. The term of the Company commenced upon the effectiveness of the Certificate, and shall continue indefinitely, unless earlier dissolved in accordance with Section 9.1.

2.5 Tax Status. It is intended that, for U.S. federal (and applicable state and local) income tax purposes, the Company be disregarded as an entity separate from the Managing Member during the time in which the Managing Member is the sole member of the Company, and no election has been made, or will be made, to treat the Company as an association taxable as a corporation.

ARTICLE III. BUSINESS OF COMPANY

The business of the Company shall be to engage in any lawful act or activities for which limited liability companies may be formed pursuant to the Act and any lawful act or activity necessary, appropriate or advisable therefor or incidental thereto.

ARTICLE IV. MEMBERS AND CAPITAL CONTRIBUTIONS

4.1 Member. The name and address of the Managing Member is Ouster, Inc., 350 Treat Avenue, San Francisco, California 94110, of which the Company is a wholly-owned subsidiary. The Managing Member owns 100% of the Membership Interest, and there are no other members of the Company.

4.2 Additional Members. One or more additional members may be admitted to the Company only with express prior written the consent of the Managing Member. Concurrently with the admission of any such additional members to the Company, the Managing Member shall amend this Agreement to make such changes as the Managing Member shall determine to reflect the fact that the Company shall have such additional members. Each additional member shall execute and deliver a joinder or counterpart to this Agreement (as amended in accordance with the immediately preceding sentence), as necessary, appropriate or advisable.

4.3 Member's Capital Contributions. The Managing Member shall make capital contributions (in cash or in kind) at such times and in such amounts as determined by the Managing Member. The capital contributions of the Managing Member shall be reflected in the books and records of the Company.

4.4 Certificates. Unless otherwise determined by the Managing Member, the Company shall not issue any certificates to evidence ownership of the Membership Interest (or any portion thereof).

4.5 Withdrawal of the Managing Member. The Managing Member shall be entitled to voluntarily withdraw from the Company. Upon such withdrawal, if no other member of the Company exists, then the Company shall dissolve in accordance with the provisions of Article IX.

ARTICLE V.
DISTRIBUTIONS AND ALLOCATIONS

5.1 Distributions. Except as prohibited by applicable law (including the Act), each distribution of cash or other assets of the Company shall be made to the Managing Member at such times and in such amounts as determined by the Managing Member in its sole discretion. Notwithstanding this Section 5.1, upon dissolution of the Company provided in Section 9.1, all distributions occurring thereafter shall be made in accordance with Section 9.3.

ARTICLE VI.
MANAGEMENT

6.1 Management. The business and affairs of the Company shall be managed by the Managing Member. The Managing Member shall have complete authority, power and discretion to manage and control the business, affairs and assets of the Company, to make all decisions with respect thereto and to perform or undertake any and all other acts or activities necessary, appropriate or advisable for, or incidental to, the management or control of the business, affairs or assets of the Company, including delegating any of its authority to any Officer pursuant to and in accordance with Section 6.2, and to do any and all other acts and things necessary, appropriate or advisable to effectuate the purposes of this Agreement, in each case as determined by the Managing Member in its sole discretion. The Managing Member shall be deemed a “manager” within the meaning of the Act. Any action taken by the Managing Member shall constitute the act of and serve to bind the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of the Managing Member as set forth in this Agreement.

6.2 Officers.

(a) The Managing Member may, from time to time, designate one or more officers to act for and on behalf of the Company with such authority as may be delegated to such officers by the Managing Member (each such designated individual, an “Officer”), each of whom shall serve as an Officer until his or her death, resignation, removal or disqualification or until his or her replacement is designated in accordance with clause (e) of this Section 6.2. The Officers may consist of a President, one or more Vice-Presidents, a Secretary, one or more Assistant Secretaries, a Treasurer and one or more Assistant Treasurers and any other titles as may be designated by the Managing Member. Any number of offices may be held by the same individual.

(b) The initial Officers, and their respective titles, as of the date hereof, are set forth on Exhibit A. The Managing Member may appoint such additional Officers as may be necessary, appropriate or advisable for the business of the Company, each of whom shall hold office for such period, have such authority and perform such duties as are provided in this Agreement or as the Managing Member may from time to time determine.

(c) Any action taken by an Officer designated by the Managing Member pursuant to authority delegated to such Officer shall constitute the act of and serve to bind the Company. The Managing Member hereby authorizes Officers to bind the Company and enter into agreements for and on behalf of the Company. Persons dealing with the Company are entitled to rely conclusively on the power and authority of any Officer designated in accordance with this Agreement and any written instrument executed by the Managing Member designating such Officer and/or delegating authority to such Officer.

(d) Any Officer may be removed at any time, with or without cause, by the Managing Member. Any Officer may resign at any time by giving written notice to the Managing Member. Any resignation shall take effect upon receipt of such notice or at such later time as may be specified therein, and the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the Officer is a party.

(e) A vacancy in any office of the Company because of death, resignation, removal or disqualification or other cause shall be filled by the Managing Member.

(f) Except as explicitly set forth in this Section 6.2, without the express prior written consent of Managing Member, no Person shall have the authority to act for or bind the Company or have any right to participate in the management of the business and affairs of the Company or to have any rights or powers as a member.

6.3 Other Agents. Unless expressly authorized to do so by this Agreement or the Managing Member, no attorney-in-fact, employee, other agent of the Company or any other Person shall have any power or authority to bind the Company in any way, including to pledge its credit or assume any liability or undertake any other obligation for any purpose.

6.4 No Exclusive Duty to Company. The Managing Member and each Officer shall not be required to tend to the business and affairs of the Company as such Person's sole and exclusive function. The Managing Member and any Officer may have other business interests and may engage in other activities in addition to those relating to the Company. The Company shall not have any right, by virtue of this Agreement, to share or participate in investments or activities of the Managing Member or Officer or to the income or proceeds derived therefrom (unless such investments or activities are conducted in such Person's capacity as a member or manager of the Company or an Officer).

6.5 Proxies. On any matter that is to be voted on, or with respect to which consent or dissent may be expressed, by a member, including the Managing Member, whether at a meeting, by written consent, or otherwise, such member, including the Managing Member, may vote or express such consent or dissent by proxy. Any such proxy shall be granted in writing, by means of electronic transmission or as otherwise permitted by applicable law. Each proxy shall be revocable in the discretion of the member, including the Managing Member, executing or otherwise providing the same, unless otherwise provided in such proxy; *provided*, that such right

to revocation shall not invalidate or otherwise affect actions taken under such proxy prior to such revocation. No proxy shall be valid after the expiration of eleven months from the date it is executed or provided, unless otherwise expressly provided in such proxy. A member, including the Managing Member, may not sell its vote, consent or dissent, or issue a proxy for any sum of money or in connection with the receipt by, or the granting to, such member, including the Managing Member, or any of its affiliates of anything of value, and any such vote, consent, dissent or proxy shall be ineffective and void *ab initio*. Each proxy granted to a Person that is not a member, including the Managing Member, or one of its affiliates, shall be exercised in a manner that is in the best interest of all members and as a fiduciary to such members and the Company, and each such Person shall be deemed, by the receipt and exercise thereof, to agree to be subject to, and to exercise such proxy in a manner consistent with, the duties to which a director of a solvent Delaware corporation would be subject (without giving effect to any applicable waivers, indemnity or exculpation). Without the prior written consent of the Managing Member, proxies may not be exercised in respect of an amendment or waiver to all or any portion of this Limited Liability Company Agreement, any other organizational documents of the Company, or any merger or sale of all or substantially all of the assets of, the Company or in respect of the election or removal of officers or otherwise in a manner that is inconsistent with any applicable voting agreement applicable to the Managing Member.

6.6 Bank Accounts. The Managing Member or any Officer may from time to time open bank accounts in the name of the Company.

6.7 Expenses. The Managing Member shall be reimbursed for all direct out-of-pocket costs incurred in connection with the formation of the Company and all other reasonable expenses incurred for or on behalf of the Company.

ARTICLE VII. LIMITATIONS ON LIABILITY AND INDEMNITY

7.1 Limitation on Liability. To the fullest extent permitted by applicable law (including the Act), none of the Managing Member (in each of its capacities as a member and a manager of the Company), any officer, director, manager, shareholder, partner, member, affiliate, controlling Person, employee, agent or other representative of the Managing Member (or any affiliate of the foregoing), or any Officer, employee, agent or other representative of the Company (any such Person, a "Covered Person") shall be liable in any way or have any duty (including any fiduciary duty) to the Company, the Managing Member, any other member, any Person that takes all or a portion of a Membership Interest by assignment, any Covered Person and any other Person who is bound by this Agreement or any other Person for any act or omission (a) taken or omitted (i) pursuant to this Agreement, (ii) in good faith reliance on the provisions of this Agreement, or advice of counsel or (iii) at the direction of the Managing Member or (b) that such Person believed in good faith was in the best interest of the Company.

7.2 Duties. This Agreement is not intended to, to the fullest extent permitted by applicable law (including the Act), and does not, create or impose any duty (including any fiduciary duty) on any Covered Person. The Company, the Managing Member (in each of its capacities as a member and a manager), any other member, each other Person that takes all or a portion of a Membership Interest by assignment, each Covered Person and any other Person who

is bound by this Agreement hereby fully and unconditionally waives any and all duties (including fiduciary duties) that, absent such waiver, may be implied or created by applicable law (including the Act), and in doing so, acknowledges and agrees that the duties and obligation of each Covered Person to each other and to the Company are waived to the maximum extent permitted by applicable law (including the Act). The provisions of this Agreement, to the extent that they restrict the duties and liabilities of a Covered Person otherwise existing at law or in equity, are agreed by the Company and the Managing Member to replace such other duties and liabilities of such Covered Person. Without limiting the foregoing, whenever in this Agreement the Managing Member (in each of its capacities as a member and a manager of the Company) is permitted or required to make a decision or determination, the Managing Member shall be entitled to consider only such interests and factors as it desires or deemed appropriate (in its sole discretion), including its own interests or the interests of any other Person, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Company, any member or any other Person.

7.3 Replacement of Fiduciary Duties. To the extent that any provision of this Agreement (a) replaces, restricts or eliminates the duties (including fiduciary duties) that might otherwise, as a result of Delaware or other applicable law, be owed by the Managing Member, any other member, each other Person that takes all or a portion of a Membership Interest by assignment, each Covered Person and any other Person who is bound by this Agreement, or (b) constitutes a waiver or consent by the Company, the Managing Member (in each of its capacities as a member and a manager), any other member, each other Person that takes all or a portion of a Membership Interest by assignment, each Covered Person and any other Person who is bound by this Agreement with respect to a duty (including a fiduciary duty), such provision is hereby approved by the Company, the Managing Member, each other member, each other Person that takes all or a portion of a Membership Interest by assignment, each Covered Person and any other Person who is bound by this Agreement. It is acknowledged that such waiver is an integral part of this Agreement.

7.4 Limitation on Liability; No Liability for Company Obligations. Except as otherwise required by the Act, the debts, obligations, and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and neither Managing Member (in each of its capacities as a member and a manager of the Company) nor any other Covered Person shall have no personal liability for any such debts obligations, or liabilities of the Company solely by reason of being a member of the Company, a Covered Person or participating in the management of the Company.

7.5 Indemnification. To the fullest extent permitted by applicable law (including the Act), each of Covered Person shall be indemnified, exculpated and held harmless by the Company from and against any and all losses, damages, judgments, liabilities, obligations, fines, penalties, deficiencies, settlements and reasonable costs and expenses (including attorneys' fees) ("Losses") arising from any and all litigations, claims, demands, actions, suits, challenges, inquiries, arbitrations, mediations or other proceedings, whether civil, criminal, administrative, investigative, arbitral or appellate, in law or at equity (each a "Claim"), in which such Covered Person may be involved, or threatened to be involved, as a party or otherwise, as a result of any act or omission in connection with the Company's business (in furtherance of its interest in the Company, any transaction, any investment or otherwise arising out of or in connection with the affairs of the Company), regardless of whether such Covered Person is or continues to be a

member, manager, Officer, employee or agent of the Company at the time that such Losses are paid or incurred, unless the act or omission giving rise to the Company's indemnification obligation hereunder was taken or omitted fraudulently or constituted gross negligence or willful misconduct; provided; however, that any indemnification under this Section 7.5 shall be provided out of and to the extent of the Company assets only and shall not result in any liability of the Managing Member in excess of its total capital contributions, nor result in any liability of the Managing Member to any third party. Notwithstanding anything in this Article VII to the contrary, the Company shall have no indemnification obligation to any Covered Person with respect to any Claim initiated or brought voluntarily by such Covered Person and not by way of defense. A Covered Person may only be determined to be ineligible for indemnification if a determination is made by independent legal counsel appointed by the Managing Member that indemnification of such Indemnified Party would be a violation of law or inconsistent with the provisions of Section 7.5.

7.6 Insurance. The Managing Member may, but shall not be obligated to, cause the Company to purchase and maintain insurance for and on behalf of the Managing Member and Officers and such other Persons as the Managing Member may determine against any liability that may be asserted against any such Person or expense that may be incurred by any such Person in connection with the Company's activities.

7.7 Expense Advancement. Except as limited by law or the provisions of this Article VII, expenses incurred by a Covered Person in defending any proceeding, including a proceeding by or in the right of the Company, shall be paid by the Company to the Covered Person as promptly as reasonably practicable in advance of final disposition of the proceeding. The Managing Member may in its sole discretion require that such Indemnified Party execute a written undertaking to repay the amount of any advance if the Covered Person is determined pursuant to this Article VII or adjudicated to be ineligible for indemnification. Any such undertaking by a Covered Person shall be an unlimited general obligation of the Covered Person, need not be secured and may be accepted without regard to the financial ability of the Covered Person to make repayment. No advance payment of expenses shall be made if it is determined pursuant to Section 7.5 on the basis of the circumstances known at the time (without further investigation) that the Covered Person is ineligible for indemnification.

7.8 Successful Defense. Notwithstanding any contrary provisions of this Article VII, if a Covered Person has been wholly successful on the merits in the defense of any proceeding in which it was involved by reason of its position as a Covered Person or as a result of serving in such capacity (including termination of investigative or other proceedings without a finding of fault on the part of the Covered Person), the Covered Person shall be indemnified by the Company against all Expenses incurred by the Indemnified Party in connection therewith. For purposes of this Section 7.7, "Expenses" means all expenses, including attorneys' fees and disbursements, actually and reasonably incurred in defense of a proceeding or in seeking indemnification under this Article VII, and except for proceedings by or in the right of the Company or alleging that an Indemnified Party received an improper personal benefit, any judgments, awards, fines, penalties and reasonable amounts paid in settlement of a proceeding.

7.9 Contribution. If the indemnification provided for in Section 7.5 above for any reason is held by a court of competent jurisdiction to be unavailable to a Covered Person in respect any Losses referred to therein, then the Company, in lieu of indemnifying such Covered Person thereunder, shall contribute to the amount paid or payable by such Covered Person as a result of such Losses (a) in such proportion as is appropriate to reflect the relative benefits received by the Company and the Covered Person, or (b) if the allocation provided by clause (a) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred in clause (a) above but also the relative fault of the Company and the Covered Person in connection with the action or inaction which resulted in such Losses, as well as any other relevant equitable considerations. The relative fault of the Company and the Covered Person shall be determined by reference to, among other things, whether an untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company and Covered Person and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. Each of the Company and the Covered Parties agrees that it would not be just and equitable if contribution pursuant to Section 7.9 were determined by *pro rata* or *per capita* allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding paragraph

7.10 Non-Exclusivity. The provisions of this Article VII shall not be construed to limit the power of the Company to indemnify the any Covered Person to the fullest extent permitted by law or to enter into specific agreements, commitments or arrangements for indemnification permitted by law. The absence of any express provision for indemnification herein shall not limit any right of indemnification existing independently of this Article VII.

7.11 Priority. Each Covered Person may have certain rights to indemnification or advancement of expenses provided by or on behalf of the Managing Member or its affiliates (collectively, the "Member Indemnitors"). Notwithstanding anything to the contrary in this Agreement, to the fullest extent permitted by applicable law:

(a) the Company shall be the indemnitor of first resort (*i.e.*, the Company's obligations to each Covered Person are primary and any obligation of any other Person to provide indemnification or advancement of expenses for the same Losses incurred by each Covered Person are secondary); and

(b) the Company shall advance the full amount of expenses incurred by each Covered Person and shall be liable for the full amount of Losses to the extent legally permitted and as required by this Agreement, without regard to any rights each Covered Person may have against any other Person.

ARTICLE VIII. TRANSFERABILITY

8.1 Transfers Generally. The Managing Member may transfer (including by sale, encumbrance, assignment or other disposition) its Membership Interest (or any portion thereof) at any time. A transferee of such Membership Interest (or such portion thereof) shall be admitted to the Company as a member effective upon the later of (a) the due execution of a joinder or counterpart to this Agreement (as amended in accordance with Section 4.2) and (b) the transfer of such Membership Interest (or such portion thereof) to such transferee.

8.2 Transfer of the Entire Membership Interest. Upon a transfer by the Managing Member of all (but not any portion) of its Membership Interest and following the admission of the transferee to the Company in accordance herewith, such transferring Managing Member shall cease to be the Managing Member, and the transferee shall become the Managing Member and have all rights and obligations of the Managing Member set forth herein.

ARTICLE IX.
DISSOLUTION AND TERMINATION

9.1 Dissolution. The Company shall be dissolved upon the occurrence of any of the following events:

- (a) pursuant to any requirement of the Act; or
- (b) by the written statement of the Managing Member.

9.2 Effect of Dissolution. Upon dissolution, the Company shall cease to carry on its business, except as permitted by the Act.

9.3 Winding Up, Liquidation and Distribution of Assets.

(a) Upon dissolution of the Company, no further business shall be conducted except for the taking of such action as shall be necessary for the winding up of the affairs of the Company in an orderly manner (including the distribution of its assets to the Managing Member) pursuant to the provisions of this Section 9.3 and the Act. The Managing Member shall act as the Liquidating Trustee, or, if the Managing Member is unable to act as Liquidating Trustee, the Managing Member shall appoint a Liquidating Trustee. The Liquidating Trustee shall have full authority to wind up the affairs of the Company and to make distributions as provided herein.

(b) Upon dissolution of the Company, the Liquidating Trustee shall either sell the assets of the Company at the best price available, or the Liquidating Trustee may distribute to the Managing Member all or any portion of the Company's assets in kind.

(c) All assets of the Company shall be applied and distributed by the Liquidating Trustee in the following order:

(i) first, to the creditors of the Company, to the extent otherwise permitted by applicable law, in satisfaction of liabilities of the Company (whether by payment or the making of reasonable provision for payment thereof);

(ii) second, to setting up the reserves that the Liquidating Trustee may deem reasonably necessary, appropriate or advisable for contingent or unforeseen liabilities or obligations of the Company; and

(iii) third, to the Managing Member.

9.4 Certificate of Cancellation. Upon completion of the winding up of the affairs of the Company, the Managing Member shall file a duly executed certificate of cancellation with the Secretary of State of the State of Delaware in accordance with the Act.

ARTICLE X.
MISCELLANEOUS PROVISIONS

10.1 Application of Delaware Law. This Agreement shall be governed by, and construed in accordance with, the law of the State of Delaware.

10.2 Amendments. Any amendment to this Agreement shall be made in a writing signed by the Managing Member.

10.3 Severability. If any provision of this Agreement or the application thereof to any circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by applicable law.

10.4 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company.

[Signature page follows.]

IN WITNESS WHEREOF, the Managing Member has executed this Agreement as of the date first written above.

By: OUSTER, INC.
its managing member

By: /s/ Angus Pacala
Name: Angus Pacala
Title: Chief Executive Officer

[Signature Page to Amended and Restated Limited Liability Company Agreement – Velodyne, LLC]