

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

FORM 8-K

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

Date of Report (Date of Earliest Event Reported: **July 21, 2017**)

Function(x) Inc.

(Exact name of Registrant as Specified in its Charter)

Delaware (State or other jurisdiction of incorporation) **0-13803** (Commission File Number) **33-0637631** (I.R.S. Employer Identification Number)

902 Broadway, 11th Floor
New York, New York (Address of principal executive offices) **10010** (Zip Code)

(212) 231-0092
(Registrant's Telephone Number, including Area Code)

(Former name or former address, if changed since last report.)

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

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

Item 1.01 Entry into a Material Definitive Agreement

On July 21, 2017, Function(x) Inc. (the "Company") entered into an Amendment and Mutual Release Agreement (the "Agreement") with all holders of the Company's Series G Preferred Stock (each, a "Holder" and collectively, the "Holders") other than (i) affiliates of Robert FX Sillerman ("Sillerman"), the Company's Executive Chairman and Chief Executive Officer and (ii) the law firm which was outside counsel to the Company at the time of the Series G offering. Pursuant to the terms of the Agreement, the Company agreed to make a cash payment (the "Cash Payment") to each of the Holders in an aggregate amount equal to ninety percent (90%) of each such Holder's investment in the Company's Series G Preferred Stock (such Cash Payment to be made in four (4) equal installments according to the terms of the Agreement), in exchange for (i) the Holders agreement to amend and restate the Certificate of Designations, Preferences and Rights of the Series G Stock (the "A&R Certificate of Designation"); and (ii) a settlement of and mutual release of (x) the Company and (y) each of the Holders (and their successors and assigns), each relating to any and all actions, obligations and losses that the Company or any of the Holders suffered by reason of or arising out of that certain Subscription Agreement, dated May 2, 2017 (the "Subscription Agreement"), the Offering (as such term is defined in the Subscription Agreement), the issuance and sale of the Company's Series G Preferred Stock and any and all disclosures, representations and/or warranties made in connection therewith and any and all matters related to any of the foregoing, whether or not known or unknown.

The Agreement also provides that the Holders may put the shares of Series G Preferred Stock to the Company at any time following the six (6) month anniversary of the Agreement at a price equal to \$100 per share of the Series G Preferred Stock. Additionally, the Agreement provides that the Company may call the shares of Series G Preferred Stock at any time following the date of the Agreement at a price equal to \$105 per share of Series G Preferred Stock. The price for the put and the call increase 5% per annum.

In connection with the execution of the Agreement, Sillerman executed a Personal Guaranty, dated as of even date therewith, for the benefit of the Holders, guaranteeing the punctual payment, performance and observance when due, of all of the Company's monetary obligations under the Agreement and all other sums due from the Company to the Holders arising under the Agreement.

For a description of the terms of the A&R Certificate of Designation please see Item 5.03 of this Form 8-K (which is qualified entirely by the terms of the A&R Certificate of Designation filed herewith as Exhibit 3.1). The description of the terms of the Agreement set forth herein are for information purposes only and are qualified in their entirety by the terms of the Agreement filed herewith as Exhibit 10.1.

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

Arrangements of Certain Officers.

Brian Rosin, the Company's Chief Operating Officer, has resigned from that position, effective July 31, 2017.

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

On July 21, 2017, the Company filed the A&R Certificate of Designation with the Secretary of State of the State of Delaware with respect to the Company's Series G Convertible Preferred Stock. The A&R Certificate of Designation, among others, amends the Holders' conversion right with respect to the share of Series G Convertible Preferred Stock. All shares of Series G Convertible Preferred Stock are now convertible into ten (10) shares of the Company's common stock, par value \$0.001 per share ("Common Stock").

The A&R Certificate of Designation also includes punitive measures for the Company's failure to timely convert such shares of Series G Preferred Stock into Common Stock upon receipt of a valid conversion notice from a Holder. Additionally, the A&R Certificate of Designation includes a covenant whereby the Company has agreed to take all action necessary to reserve and keep available enough shares of Common Stock as shall from time to time be necessary to effect the conversion of all shares of the Company's Series G Preferred Stock. Finally, the A&R Certificate of Designation increases the percentage of Holders required to amend the A&R Certificate of Designation from what was previously the affirmative vote of twenty-five percent (25%) of the Holders plus Sillerman to the current requirement of the affirmative vote of fifty-one percent (51%) of the Holders. The affirmative vote of Sillerman is no longer a prerequisite for further amendment of the Certificate of Designation.

The description of the terms of the A&R Certificate of Designation set forth herein are for information purposes only and are qualified in their entirety by the terms of the A&R Certificate of Designation filed herewith as Exhibit 3.1.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No. Description

3.1 Form of Amended and Restated Certificate of Designations, Preferences and Rights of the Series G Convertible Preferred Stock.

10.1 Amendment and Mutual Release Agreement.

SIGNATURES

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

FUNCTION(X) INC.

Date: July 26, 2017

By: /s/ Mitchell J. Nelson

Name: Mitchell J. Nelson

Title: Executive Vice President

**CERTIFICATE OF DESIGNATION OF RIGHTS, POWERS, PREFERENCES, PRIVILEGES AND
RESTRICTIONS OF THE
SERIES G CONVERTIBLE PREFERRED STOCK OF
FUNCTION(X) INC.**

I, Robert F.X. Sillerman, hereby certify that I am the Chief Executive Officer of Function(x) Inc. (the “**Company**”), a corporation organized and existing under the General Corporation Law of the State of Delaware (the “**DGCL**”), and further do hereby certify:

That, pursuant to the authority expressly conferred upon the Board of Directors of the Company (the “**Board**”) by the Company’s Certificate of Incorporation, as amended (the “**Certificate of Incorporation**”), the Board on April 28, 2017 adopted the following resolutions creating a series of shares of Preferred Stock designated as Series G Convertible Preferred Stock, none of which shares has been issued:

RESOLVED, that the Board designates the Series G Convertible Preferred Stock and the number of shares constituting such series, and fixes the rights, powers, preferences, privileges and restrictions relating to such series in addition to any set forth in the Certificate of Incorporation as follows:

TERMS OF SERIES G CONVERTIBLE PREFERRED STOCK

1. Designation and Number of Shares. There shall hereby be created and established by this Certificate of Designation of Rights, Powers, Preferences, Privileges and Restrictions (this “**Certificate of Designation**”) a series of preferred stock of the Company designated as “Series G Convertible Preferred Stock” (the “**Preferred Shares**”). The authorized number of Preferred Shares shall be 2,000,000 shares. Each Preferred Share shall have \$0.001 par value. Capitalized terms not defined herein shall have the meaning as set forth in Section 21 below or in the Subscription Agreement.

2. Ranking. The rights of all such shares of capital stock of the Company, other than the Series A Preferred Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, Series E Preferred Stock and Series F Preferred Stock, shall be subject to the rights, powers, preferences and privileges of the Preferred Shares. In the event of the merger or consolidation of the Company with or into another corporation, the Preferred Shares shall maintain their relative rights, powers, designations, privileges and preferences provided for herein and no such merger or consolidation shall result inconsistent therewith.

3. Dividends. In addition to Sections 6(a) and 12 below, from and after the first date of issuance of any Preferred Shares (the “**Initial Issuance Date**”), each holder of a Preferred Share (each, a “**Holder**” and, collectively, the “**Holders**”) shall be entitled to receive dividends (“**Dividends**”) when and as declared by the Board, from time to time, in its sole discretion, which Dividends shall be paid by the Company out of funds legally available therefor, payable, subject to the conditions and other terms hereof, in cash on the Stated Value of such Preferred Share.

4. Conversion. At any time, each Preferred Share shall be convertible into validly issued, fully paid and non-assessable shares of Common Stock on the terms and conditions set forth in this Section 4.

(a) Holder’s Conversion Right. Subject to the provisions of Section 4(e), each Holder shall be entitled to convert any whole number of Preferred Shares into validly issued, fully paid and non-assessable shares of Common Stock in accordance with Section 4(c) at the Conversion Rate (as defined below).

(b) Conversion Rate. The number of validly issued, fully paid and non-assessable shares of Common Stock issuable upon conversion of each Preferred Share pursuant to Section 4(a) shall be determined according to the following formula (the “**Conversion Rate**”):

$$\frac{\text{Base Amount}}{\text{Conversion Price}}$$

No fractional shares of Common Stock are to be issued upon the conversion of any Preferred Shares. If the issuance would result in the issuance of a fraction of a share of Common Stock, the Company shall round such fraction of a share of Common Stock up to the nearest whole share.

(c) Mechanics of Conversion. The conversion of each Preferred Share shall be conducted in the following manner:

(i) Holder’s Conversion. To convert a Preferred Share into validly issued, fully paid and non-assessable shares of Common Stock on any date (a “**Conversion Date**”), a Holder shall deliver (whether

via facsimile or otherwise), for receipt on or prior to 11:59 p.m., New York time, on such date, a copy of an executed notice of conversion of the share(s) of Preferred Shares subject to such conversion in the form attached hereto as **Exhibit I** (the “**Conversion Notice**”) to the Company. If required by Section 4(c)(vi), within three (3) Trading Days following a conversion of any such Preferred Shares as aforesaid, such Holder shall surrender to a nationally recognized overnight delivery service for delivery to the Company the original certificates representing the share(s) of Preferred Shares (the “**Preferred Share Certificates**”) so converted as aforesaid.

(ii) Company’s Response. On or before the first (1st) Trading Day following the date of receipt of a Conversion Notice, the Company shall transmit by facsimile an acknowledgment of confirmation, in the form attached hereto as **Exhibit II**, of receipt of such Conversion Notice to such Holder and the transfer agent for the Company’s Common Stock (the “**Transfer Agent**”), which confirmation shall constitute an instruction to the Transfer Agent to process such Conversion Notice in accordance with the terms herein. On or before the second (2nd) Trading Day following the date of receipt by the Company of such Conversion Notice, the Company shall (1) provided that the Transfer Agent is participating in DTC Fast Automated Securities Transfer Program, credit such aggregate number of shares of Common Stock to which such Holder shall be entitled to such Holder’s or its designee’s balance account with DTC through its Deposit and Withdrawal at Custodian system, or (2) if the Transfer Agent is not participating in the DTC Fast Automated Securities Transfer Program, issue and deliver (via reputable overnight courier) to the address as specified in such Conversion Notice, a certificate, registered in the name of such Holder or its designee or, at the request of the Holder, in “book entry” form, in which case such issuance shall be made on or before the second (2nd) Trading Day following receipt of a Conversion Notice by the Company, for the number of shares of Common Stock to which such Holder shall be entitled. If the number of Preferred Shares represented by the Preferred Share Certificate(s) submitted for conversion pursuant to Section 4(c)(vi) is greater than the number of Preferred Shares being converted, then the Company shall, if requested by such Holder, promptly, but in no event later than three (3) Trading Days after receipt of the Holder’s Preferred Share Certificate(s) and at its own expense, issue and deliver to such Holder (or its designee) a new Preferred Share Certificate representing the number of Preferred Shares not converted.

(iii) Record Holder. The Person or Persons entitled to receive the shares of Common Stock issuable upon a conversion of Preferred Shares shall be treated for all purposes as the record holder or holders of such shares of Common Stock on the Conversion Date.

(iv) Company’s Failure to Timely Convert. If the Company shall fail, for any reason or for no reason, to issue to a Holder within three (3) Trading Days after the Company’s receipt of a Conversion Notice (whether via facsimile or otherwise) (the “**Share Delivery Deadline**”), a certificate for the number of shares of Common Stock to which such Holder is entitled and register such shares of Common Stock on the Company’s share register or to credit such Holder’s or its designee’s balance account with DTC for such number of shares of Common Stock to which such Holder is entitled upon such Holder’s conversion of any Preferred Shares (as the case may be) (a “**Conversion Failure**”), then, in addition to all other remedies available to such Holder, such Holder, upon written notice to the Company, (1) may void its Conversion Notice with respect to, and retain or have returned (as the case may be) any Preferred Shares that have not been converted pursuant to such Holder’s Conversion Notice, provided that the voiding of a Conversion Notice shall not affect the Company’s obligations to make any payments that have accrued prior to the date of such notice pursuant to the terms of this Certificate of Designation or otherwise, and (2) the Company shall pay in cash to such Holder on each day after such third (3rd) Trading Day that the issuance of such shares of Common Stock is not timely effected an amount equal to 1.0 % of the product of (A) the aggregate number of shares of Common Stock not issued to such Holder on a timely basis and to which the Holder is entitled, and (B) the Closing Sale Price of the Common Stock on the Trading Day immediately preceding the last possible date on which the Company could have issued such shares of Common Stock to the Holder without violating Section 4(c). In addition to the foregoing, if within three (3) Trading Days after the Company’s receipt of a Conversion Notice (whether via facsimile or otherwise), the Company shall fail to issue and deliver a certificate to such Holder and register such shares of Common Stock on the Company’s share register or credit such Holder’s or its designee’s balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder’s conversion hereunder (as the case may be), and, if on or after such third (3rd) Trading Day, such Holder (or any other Person in respect, or on behalf, of such Holder) purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of all or any portion of the number of shares of Common Stock, or a sale of a number of shares of Common Stock equal to all or any portion of the number of shares of Common Stock, issuable upon such conversion that such Holder so anticipated receiving from the Company, then, in addition to all other remedies available to such Holder, the Company shall, within three (3) Business Days after such Holder’s request and in the Holder’s sole discretion, either (1) pay cash to such Holder in an amount equal to such

Holder's total purchase price (including brokerage commissions and other out-of-pocket expenses, if any) for the shares of Common Stock so purchased (including, without limitation, by any other Person in respect, or on behalf, of such Holder) (the "**Buy-In Price**"), at which point the Company's obligation to so issue and deliver such certificate or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) (and to issue such shares of Common Stock) shall terminate, or (2) promptly honor its obligation to so issue and deliver to such Holder a certificate or certificates representing such shares of Common Stock or credit such Holder's balance account with DTC for the number of shares of Common Stock to which such Holder is entitled upon such Holder's conversion hereunder (as the case may be) and pay cash to such Holder in an amount equal to the excess (if any) of the Buy-In Price over the product of (A) such number of shares of Common Stock multiplied by (B) the lowest Closing Sale Price of the Common Stock on any Trading Day during the period commencing on the date of the applicable Conversion Notice and ending on the date of such issuance and payment under this clause (2).

(v) Pro Rata Conversion; Disputes. In the event the Company receives a Conversion Notice from more than one Holder for the same Conversion Date and the Company can convert some, but not all, of such Preferred Shares submitted for conversion, the Company shall convert from each Holder electing to have Preferred Shares converted on such date a pro rata amount of such Holder's Preferred Shares submitted for conversion on such date based on the number of Preferred Shares submitted for conversion on such date by such Holder relative to the aggregate number of Preferred Shares submitted for conversion on such date. In the event of a dispute as to the number of shares of Common Stock issuable to a Holder in connection with a conversion of Preferred Shares, the Company shall issue to such Holder the number of shares of Common Stock not in dispute and resolve such dispute in accordance with Section 20.

(vi) Book-Entry. Notwithstanding anything to the contrary set forth in this Section 4, upon conversion of any Preferred Shares in accordance with the terms hereof, no Holder thereof shall be required to physically surrender the certificate representing the Preferred Shares to the Company following conversion thereof unless (1) the full or remaining number of Preferred Shares represented by the certificate are being converted (in which event such certificate(s) shall be delivered to the Company as contemplated by this Section 4(c)(vi)), or (2) such Holder has provided the Company with prior written notice (which notice may be included in a Conversion Notice) requesting reissuance of Preferred Shares upon physical surrender of any Preferred Shares. Each Holder and the Company shall maintain records showing the number of Preferred Shares so converted by such Holder and the dates of such conversions or shall use such other method, reasonably satisfactory to such Holder and the Company, so as not to require physical surrender of the certificate representing the Preferred Shares upon each such conversion. In the event of any dispute or discrepancy, such records of the Holder establishing the number of Preferred Shares to which the record holder is entitled shall be controlling and determinative in the absence of manifest error. A Holder and any transferee or assignee, by acceptance of a certificate, acknowledge and agree that, by reason of the provisions of this paragraph, following conversion of any Preferred Shares, the number of Preferred Shares represented by such certificate may be less than the number of Preferred Shares stated on the face thereof. Each certificate for Preferred Shares shall bear the following legend:

ANY TRANSFEREE OR ASSIGNEE OF THIS CERTIFICATE SHOULD CAREFULLY REVIEW THE TERMS OF THE CORPORATION'S CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES G CONVERTIBLE PREFERRED STOCK THAT MAY BE REPRESENTED BY THIS CERTIFICATE, INCLUDING SECTION 4(c)(vi) THEREOF. THE NUMBER OF SHARES OF SERIES G CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE MAY BE LESS THAN THE NUMBER OF SHARES OF SERIES G CONVERTIBLE PREFERRED STOCK STATED ON THE FACE HEREOF PURSUANT TO SECTION 4(c)(vi) OF THE CERTIFICATE OF DESIGNATION RELATING TO THE SHARES OF SERIES G CONVERTIBLE PREFERRED STOCK REPRESENTED BY THIS CERTIFICATE.

(d) Taxes. The Company shall pay any and all documentary, stamp, transfer (but only in respect of the registered holder thereof), issuance and other similar taxes that may be payable with respect to the issuance and delivery of shares of Common Stock upon the conversion of Preferred Shares.

(e) Limitation on Beneficial Ownership. Notwithstanding anything to the contrary set forth in this Certificate of Designation, at no time may all or a portion of the Series G Convertible Preferred Stock be converted if the number of shares of Common Stock to be issued pursuant to such conversion would exceed, when aggregated with all other shares of Common Stock owned by the Holder at such time, the number of shares of Common Stock that would result in the Holder beneficially owning (as determined in accordance with Section

13(d) of the 1934 Act and the rules thereunder) more than 4.99% of all of the Common Stock outstanding at such time (the “**4.99% Beneficial Ownership Limitation**”); provided, however, that, upon the Holder providing the Corporation with sixty-one (61) days’ advance notice (the “**4.99% Waiver Notice**”) that the Holder would like to waive this Section 4(e) with regard to any or all shares of Common Stock issuable upon conversion of the Preferred Shares, this Section 4(e) will be of no force or effect with regard to all or a portion of the Series G Convertible Preferred Stock referenced in the 4.99% Waiver Notice but shall in no event waive the 9.99% Beneficial Ownership Limitation described below. Notwithstanding anything to the contrary set forth in this Certificate of Designation, at no time may all or a portion of the Preferred Shares be converted if the number of shares of Common Stock to be issued pursuant to such conversion, when aggregated with all other shares of Common Stock beneficially owned by the Holder at such time, would result in the Holder beneficially owning (as determined in accordance with Section 13(d) of the 1934 Act and the rules thereunder) in excess of 9.99% of the then-issued and outstanding shares of Common Stock outstanding at such time (the “**9.99% Beneficial Ownership Limitation**” and the lower of the 9.99% Beneficial Ownership Limitation and the 4.99% Beneficial Ownership Limitation then in effect, the “**Maximum Percentage**”). By written notice to the Company, a holder of Preferred Shares may from time to time decrease the Maximum Percentage to any other percentage specified in such notice. For purposes hereof, in determining the number of outstanding shares of Common Stock, the Holder may rely on the number of outstanding shares of Common Stock as reflected in (1) the Company’s most recent Annual Report on Form 10-K, Quarterly Report on Form 10-Q, Current Report on Form 8-K or other public filing with the Securities and Exchange Commission, as the case may be, (2) a more recent public announcement by the Company, or (3) any other notice by the Company setting forth the number of shares of Common Stock outstanding. For any reason at any time, upon the written or oral request of a holder of Preferred Shares, the Company shall within three (3) Business Days confirm orally and in writing to such holder the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to the conversion or exercise of securities of the Company, including the Preferred Shares, by the Holder and its Affiliates since the date as of which such number of outstanding shares of Common Stock was reported, that in any event are convertible or exercisable, as the case may be, into shares of the Company’s Common Stock within 60 days’ of such calculation and that are not subject to a limitation on conversion or exercise analogous to the limitation contained herein. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 4(e) to correct this paragraph (or any portion hereof) that may be defective or inconsistent with the intended beneficial ownership limitation herein contained or to make changes or supplements necessary or desirable to properly give effect to such limitation.

(f) Mandatory Conversion.

(i) The Company shall have the right, at its option, to cause the Preferred Shares then outstanding, in whole but not in part, to be automatically converted into such number of shares of Common Stock for each share of the Series G Convertible Preferred Stock pursuant to this Section 4, with such adjustment as the Company may elect pursuant to Section 8. The Company may exercise its right to cause a mandatory conversion pursuant to this Section 4(f) only if the Closing Bid Price of the Common Stock equals or exceeds \$1.50 per share for at least ten (10) consecutive Trading Days.

(ii) To exercise the mandatory conversion right pursuant to this Section 4(f), the Company shall deliver written notice at least ten (10) days prior to the Conversion Date selected by the Company to all record Holders of the Preferred Shares then outstanding. Such notice shall announce the Company’s intention to convert the Preferred Stock and, in addition to any information required by applicable law or regulation, specify: (A) the Conversion Date; (B) the number of shares of Common Stock to be issued in respect of each share of Series G Preferred Stock that is converted; and (C) the place or places where the Preferred Shares are to be surrendered for issuance of shares of Common Stock, which date shall be as soon as practicable following the Conversion Date. Such notice will be sent by first class or registered mail, postage prepaid, to each Holder of Preferred Shares at such Holder's address last shown on the records of the transfer agent for the Preferred Shares (or the records of the Company, if it serves as its own transfer agent).

5. Intentionally omitted.

6. Rights Upon Issuance of Purchase Rights and Other Corporate Events.

(a) Purchase Rights. In addition to any adjustments pursuant to Section 8 below, if at any time the Company grants, issues or sells any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of Common Stock (the “**Purchase Rights**”), then each Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the

aggregate Purchase Rights that such Holder could have acquired if such Holder had held the number of shares of Common Stock acquirable upon complete conversion of all the Preferred Shares (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares) held by such Holder immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights; provided, however, to the extent that such Holder's right to participate in any such Purchase Right would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such Purchase Right to such extent (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for such Holder until such time, if ever, as its right thereto would not result in such Holder exceeding the Maximum Percentage.

(b) Other Corporate Events. In addition to and not in substitution for any other rights hereunder, prior to the consummation of any Fundamental Transaction pursuant to which holders of shares of Common Stock are entitled to receive securities or other assets with respect to or in exchange for shares of Common Stock (a "**Corporate Event**"), the Company shall make appropriate provision to ensure that each Holder will thereafter have the right to receive upon a conversion of all the Preferred Shares held by such Holder (i) in addition to the shares of Common Stock receivable upon such conversion, such securities or other assets to which such Holder would have been entitled with respect to such shares of Common Stock had such shares of Common Stock been held by such Holder upon the consummation of such Corporate Event (without taking into account any limitations or restrictions on the convertibility of the Preferred Shares contained in this Certificate of Designation), or (ii) in lieu of the shares of Common Stock otherwise receivable upon such conversion, such securities or other assets received by the holders of shares of Common Stock in connection with the consummation of such Corporate Event in such amounts as such Holder would have been entitled to receive had the Preferred Shares held by such Holder initially been issued with conversion rights for the form of such consideration (as opposed to shares of Common Stock) at a conversion rate for such consideration commensurate with the Conversion Rate. The provisions of this Section 6(b) shall apply similarly and equally to successive Corporate Events and shall be applied without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designation.

7. Rights Upon Fundamental Transactions.

(a) Assumption. The Company shall not enter into or be party to a Fundamental Transaction unless: (i) the Successor Entity assumes in writing all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents in accordance with the provisions of this Section 7 pursuant to written agreements in form and substance satisfactory to the Required Holders and approved by the Required Holders prior to such Fundamental Transaction, including agreements to deliver to each holder of Preferred Shares in exchange for such Preferred Shares a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Certificate of Designation, including, without limitation, having a stated value and dividend rate equal to the stated value and dividend rate of the Preferred Shares held by the Holders and having similar ranking to the Preferred Shares, and reasonably satisfactory to the Required Holders, and (ii) the Successor Entity (including its Parent Entity) is a publicly traded corporation whose shares of common stock are quoted on or listed for trading on an Eligible Market. Upon the occurrence of any Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Certificate of Designation and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein and therein. In addition to the foregoing, upon consummation of a Fundamental Transaction, the Successor Entity shall deliver to each Holder confirmation that there shall be issued upon conversion of the Preferred Shares at any time after the consummation of such Fundamental Transaction, in lieu of the shares of Common Stock (or other securities, cash, assets or other property (except such items still issuable under Sections 5 and 12, which shall continue to be receivable thereafter)) issuable upon the conversion of the Preferred Shares prior to such Fundamental Transaction, such shares of publicly traded common stock (or their equivalent) of the Successor Entity (including its Parent Entity) that each Holder would have been entitled to receive upon the happening of such Fundamental Transaction had all the Preferred Shares held by each Holder been converted immediately prior to such Fundamental Transaction (without regard to any limitations on the conversion of the Preferred Shares contained in this Certificate of Designation), as adjusted in accordance with the provisions of this Certificate of Designation. The provisions of this Section 7 shall apply similarly and equally to successive Fundamental Transactions and shall be applied without regard to any limitations on the conversion of the Preferred Shares.

8. Rights Upon Issuance of Other Securities and Special Dividends.

(a) Intentionally Omitted.

(b) Adjustment of Conversion Price upon Subdivision or Combination of Common Stock. Without limiting any provision of Sections 5 and 12, if the Company at any time on or after the Purchase Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision of Sections 5 and 12, if the Company at any time on or after the Purchase Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8(b) shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 8(b) occurs during the period that a Conversion Price is calculated hereunder, then the calculation of such Conversion Price shall be adjusted appropriately to reflect such event.

(c) Other Events. In the event that the Company (or any Subsidiary) shall take any action to which the provisions hereof are not strictly applicable, or, if applicable, would not operate to protect any Holder from dilution or if any event occurs of the type contemplated by the provisions of this Section 8 but not expressly provided for by such provisions (including, without limitation, the granting of stock appreciation rights, phantom stock rights or other rights with equity features), then the Board shall in good faith determine and implement an appropriate adjustment in the Conversion Price so as to protect the rights of such Holder; provided, however, that no such adjustment pursuant to this Section 8(c) will increase the Conversion Price as otherwise determined pursuant to this Section 8; provided, further, that, if such Holder does not accept such adjustments as appropriately protecting its interests hereunder against such dilution, then the Board and such Holder shall agree, in good faith, upon an independent investment bank of nationally recognized standing to make such appropriate adjustments, whose determination shall be final and binding and whose fees and expenses shall be borne by the Company.

(d) Calculations. All calculations under this Section 8 shall be made by rounding to the nearest one-hundred thousandth of a cent or the nearest 1/100th of a share, as applicable. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Company, and the disposition of any such shares, other than a return thereof to the Company's treasury for cancellation, shall be considered an issue or sale of Common Stock.

9. Authorized Shares.

(a) Reservation. The Company shall initially reserve out of its authorized and unissued Common Stock a number of shares of Common Stock equal to 125% of the Conversion Rate with respect to the Base Amount of each Preferred Share as of the Initial Issuance Date (assuming for purposes hereof, that all the Preferred Shares issuable pursuant to the Subscription Agreement have been issued, such Preferred Shares are convertible at the Conversion Price and without taking into account any limitations on the conversion of such Preferred Shares set forth in herein) issuable pursuant to the terms of this Certificate of Designation from the Initial Issuance Date through the second anniversary of the Initial Issuance Date assuming (assuming for purposes hereof, that all the Preferred Shares issuable pursuant to the Subscription Agreement have been issued and without taking into account any limitations on the issuance of securities set forth herein). So long as any of the Preferred Shares are outstanding, the Company shall take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, as of any given date, 100% of the number of shares of Common Stock as shall from time to time be necessary to effect the conversion of all of the Preferred Shares issued or issuable pursuant to the Subscription Agreement assuming for purposes hereof, that all the Preferred Shares issuable pursuant to the Subscription Agreement have been issued and without taking into account any limitations on the issuance of securities set forth herein), provided that at no time shall the number of shares of Common Stock so available be less than the number of shares required to be reserved by the previous sentence (without regard to any limitations on conversions contained in this Certificate of Designation) (the "**Required Amount**"). The initial number of shares of Common Stock reserved for conversions of the Preferred Shares and each increase in the number of shares so reserved shall be allocated pro rata among the Holders based on the number of Preferred Shares held by each Holder on the Initial Issuance Date or increase in the number of reserved shares (as the case may be) (the "**Authorized Share Allocation**"). In the event a Holder shall sell or otherwise transfer any of such Holder's Preferred Shares, each transferee shall be allocated a pro rata portion of such Holder's Authorized Share Allocation. Any shares of Common Stock reserved and allocated to any Person who ceases to hold any Preferred Shares shall be allocated to the remaining Holders of Preferred Shares, pro rata based on the number of Preferred Shares then held by such Holders.

(b) Insufficient Authorized Shares. If, notwithstanding Section 9(a) and not in limitation thereof, at any time while any of the Preferred Shares remain outstanding, the Company does not have a sufficient number of authorized and unissued shares of Common Stock to satisfy its obligation to have available for issuance upon conversion of the Preferred Shares at least a number of shares of Common Stock equal to the Required Amount (an “**Authorized Share Failure**”), then the Company shall promptly take all action necessary to increase the Company’s authorized shares of Common Stock to an amount sufficient to allow the Company to reserve and have available the Required Amount for all of the Preferred Shares then outstanding. Without limiting the generality of the foregoing sentence, as soon as practicable after the date of the occurrence of an Authorized Share Failure, but in no event later than sixty (60) days after the occurrence of such Authorized Share Failure, the Company shall hold a meeting of its shareholders or conduct a consent solicitation for the approval of an increase in the number of authorized shares of Common Stock. In connection with such meeting or consent solicitation, the Company shall provide each shareholder with a proxy statement or information statement, as relevant, and shall use its commercial best efforts to solicit its shareholders’ approval of such increase in authorized shares of Common Stock and to cause its Board to recommend to the shareholders that they approve such proposal. Nothing contained in this Section 9 shall limit any obligations of the Company under any provision of the Subscription Agreement. In the event that the Company is prohibited from issuing shares of Common Stock upon a conversion of any Preferred Share due to the failure by the Company to have sufficient shares of Common Stock available out of the authorized but unissued shares of Common Stock (such unavailable number of shares of Common Stock, the “**Authorization Failure Shares**”), in lieu of delivering such Authorization Failure Shares to such Holder of such Preferred Shares, the Company shall pay cash in exchange for the cancellation of such Preferred Shares convertible into such Authorized Failure Shares at a price equal to the sum of (i) the product of (x) such number of Authorization Failure Shares and (y) the Closing Sale Price on the Trading Day immediately preceding the date such Holder delivers the applicable Conversion Notice with respect to such Authorization Failure Shares to the Company and (ii) to the extent such Holder purchases (in an open market transaction or otherwise) shares of Common Stock to deliver in satisfaction of a sale by such Holder of Authorization Failure Shares, any brokerage commissions and other out-of-pocket expenses, if any, of such Holder incurred in connection therewith.

10. Voting Rights.

(a) Voting Rights. Except as otherwise expressly required by law, the Holders of Series G Convertible Preferred Stock shall be entitled to vote on all matters submitted to shareholders of the Company and shall be entitled to the number of votes for each Preferred Share owned at the record date for the determination of shareholders entitled to vote on such matter or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is solicited, equal to the number of shares of Common Stock such Series G Convertible Preferred Stock would be convertible into (voting as a class with Common Stock), but not in excess of the conversion limitations set forth in Section 4(e) herein. Except as otherwise required by law, the Holders shall vote together with the holders of Common Stock on all matters and shall not vote as a separate class.

(b) So long as any Series G Convertible Preferred Stock is outstanding, in addition to any other vote of stockholders of the Company required under applicable law or the Certificate of Incorporation, the affirmative vote or consent of the Required Holders, voting separately as a single class, will be required (i) for any amendment of the Certificate of Incorporation if the amendment would alter or change the powers, preferences, privileges or rights of the Holders with respect to the Series G Convertible Preferred Stock so as to affect them adversely, (ii) to issue, authorize or increase the authorized amount of, or issue or authorize any obligation or security convertible into or evidencing a right to purchase, any Senior Preferred Stock, or (iii) to reclassify any authorized stock of the Company into any Senior Preferred Stock, or any obligation or security convertible into or evidencing a right to purchase any Senior Preferred Stock.

11. Liquidation, Dissolution, Winding-Up. In the event of a Liquidation Event, the Holders shall be entitled to receive in cash out of the assets of the Company, whether from capital or from earnings available for distribution to its shareholders (the “**Liquidation Funds**”), before any amount shall be paid to the holders of any of shares of Junior Stock, an amount per Preferred Share equal to the greater of (a) the Base Amount thereof on the date of such payment, and (b) the amount per share such Holder would receive if such Holder converted such Preferred Shares into Common Stock immediately prior to the date of such payment; provided, however, that, if the Liquidation Funds are insufficient to pay the full amount due to the Holders and holders of shares of Parity Stock, then each Holder and each holder of Parity Stock shall receive a percentage of the Liquidation Funds equal to the full amount of Liquidation Funds payable to such Holder and such holder of Parity Stock as a liquidation preference, in accordance with their respective certificate of designation (or equivalent), as a percentage of the full amount of Liquidation Funds payable to all holders of Preferred Shares and all holders of shares of Parity Stock. To the extent necessary, the Company shall cause such actions to be taken by each of its Subsidiaries so as to enable, to the maximum extent permitted by law, the proceeds of a Liquidation Event to be distributed to the Holders in accordance with this Section 11. All the preferential amounts to be paid to the Holders under this Section 11 shall be paid or set apart for payment before the payment or setting apart for payment of any amount for, or the distribution of any Liquidation Funds of the Company to the holders of shares of

Junior Stock in connection with a Liquidation Event as to which this Section 11 applies.

12. Participation. In addition to any adjustments pursuant to Section 8(b), the Holders shall, as holders of Preferred Shares, be entitled to receive such dividends paid and distributions made to the holders of shares of Common Stock to the same extent as if such Holders had converted each Preferred Share held by each of them into shares of Common Stock (without regard to any limitations on conversion herein or elsewhere) and had held such shares of Common Stock on the record date for such dividends and distributions. Payments under the preceding sentence shall be made concurrently with the dividend or distribution to the holders of shares of Common Stock; provided, however, to the extent that a Holder's right to participate in any such dividend or distribution would result in such Holder exceeding the Maximum Percentage, then such Holder shall not be entitled to participate in such dividend or distribution to such extent (or the beneficial ownership of any such shares of Common Stock as a result of such dividend or distribution to such extent) and such dividend or distribution to such extent shall be held in abeyance for the benefit of such Holder until such time, if ever, as its right thereto would not result in such Holder exceeding the Maximum Percentage.

13. Lost or Stolen Certificates. Upon receipt by the Company of evidence reasonably satisfactory to the Company of the loss, theft, destruction or mutilation of any certificates representing Preferred Shares (as to which a written certification and the indemnification contemplated below shall suffice as such evidence), and, in the case of loss, theft or destruction, of an indemnification undertaking by the applicable Holder to the Company in customary and reasonable form and, in the case of mutilation, upon surrender and cancellation of the certificate(s), the Company shall execute and deliver new certificate(s) of like tenor and date.

14. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Certificate of Designation shall be cumulative and in addition to all other remedies available under this Certificate of Designation and any of the other Transaction Documents, at law or in equity (including a decree of specific performance and/or other injunctive relief), and no remedy contained herein shall be deemed a waiver of compliance with the provisions giving rise to such remedy. Nothing herein shall limit any Holder's right to pursue actual and consequential damages for any failure by the Company to comply with the terms of this Certificate of Designation. The Company covenants to each Holder that there shall be no characterization concerning this instrument other than as expressly provided herein. Amounts set forth or provided for herein with respect to payments, conversion and the like (and the computation thereof) shall be the amounts to be received by a Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holders and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, each Holder shall be entitled, in addition to all other available remedies, to an injunction restraining any such breach or any such threatened breach, without the necessity of showing economic loss and without any bond or other security being required. The Company shall provide all information and documentation to a Holder that is requested by such Holder to enable such Holder to confirm the Company's compliance with the terms and conditions of this Certificate of Designation.

15. Noncircumvention. The Company hereby covenants and agrees that the Company will not, by amendment of its Certificate of Incorporation, bylaws or through any reorganization, transfer of assets, consolidation, merger, scheme of arrangement, dissolution, issue or sale of securities, or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Certificate of Designation, and will at all times in good faith carry out all of the provisions of this Certificate of Designation and take all action as may be required to protect the rights of the Holders. Without limiting the generality of the foregoing or any other provision of this Certificate of Designation, the Company (i) shall not increase the par value of any shares of Common Stock receivable upon the conversion of any Preferred Shares above the Conversion Price then in effect, (ii) shall take all such actions as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and non-assessable shares of Common Stock upon the conversion of Preferred Shares, and (iii) shall, so long as any Preferred Shares are outstanding, take all action necessary to reserve and keep available out of its authorized and unissued shares of Common Stock, solely for the purpose of effecting the conversion of the Preferred Shares, the maximum number of shares of Common Stock as shall from time to time be necessary to effect the conversion of the Preferred Shares then outstanding (without regard to any limitations on conversion contained herein).

16. Failure or Indulgence Not Waiver. No failure or delay on the part of a Holder in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such power, right or privilege preclude other or further exercise thereof or of any other right, power or privilege. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party. This Certificate of Designation shall be deemed to be jointly drafted by the Company and all Holders and shall not be construed against any Person as the drafter hereof.

17. Notices. The Company shall provide each Holder of Preferred Shares with prompt written notice of all actions taken pursuant to the terms of this Certificate of Designation, including in reasonable detail a description of such action and the reason therefor. Whenever notice is required to be given under this Certificate of Designation,

unless otherwise provided herein, such notice must be in writing and shall be given in accordance with the Subscription Agreement. Without limiting the generality of the foregoing, the Company shall give written notice to each Holder (i) promptly following any adjustment of the Conversion Price, setting forth in reasonable detail, and certifying, the calculation of such adjustment, (ii) promptly following any decision to mandatorily convert the Preferred Shares pursuant to Section 4(f) hereof, and (iii) at least ten (10) days prior to the date on which the Company closes its books or takes a record (1) with respect to any dividend or distribution upon the Common Stock, (2) with respect to any grant, issuances, or sales of any Options, Convertible Securities or rights to purchase stock, warrants, securities or other property to all holders of shares of Common Stock as a class, or (3) for determining rights to vote with respect to any Fundamental Transaction, dissolution or liquidation, provided, in each case, that such information shall be made known to the public prior to, or simultaneously with, such notice being provided to any Holder.

18. Preferred Shares Register. The Company shall maintain at its principal executive offices (or such other office or agency of the Company as it may designate and provide notice to the Holders thereof), a register for the Preferred Shares, in which the Company shall record the name, address and facsimile number of the Persons in whose name the Preferred Shares have been issued, as well as the name, address, facsimile number and tax identification number of each transferee. The Company may treat the Person in whose name any Preferred Shares is registered on the register as the owner and holder thereof for all purposes, notwithstanding any notice to the contrary, but in all events recognizing any properly made transfers.

19. Shareholder Matters; Amendment.

(a) Shareholder Matters. Any shareholder action, approval or consent required, desired or otherwise sought by the Company pursuant to the DGCL, the Certificate of Incorporation, this Certificate of Designation or otherwise with respect to the issuance of Preferred Shares may be effected by written consent of the Company's shareholders or at a duly called meeting of the Company's shareholders, all in accordance with the applicable rules and regulations of the DGCL. This provision is intended to comply with the applicable sections of the DGCL permitting shareholder action, approval and consent affected by written consent in lieu of a meeting.

(b) Amendment. This Certificate of Designation or any provision hereof may be amended by obtaining the affirmative vote at a meeting duly called for such purpose, or written consent without a meeting in accordance with the DGCL, of the Required Holders, voting separate as a single class, and with such other shareholder approval, if any, as may then be required pursuant to the DGCL and the Certificate of Incorporation.

20. Dispute Resolution.

(a) Disputes Over Closing Bid Price, Closing Sale Price Conversion Price or Fair Market Value .

(i) In the case of a dispute relating to a Closing Bid Price, a Closing Sale Price, a Conversion Price or fair market value (as the case may be) (including, without limitation, a dispute relating to the determination of any of the foregoing), the Company or such applicable Holder (as the case may be) shall submit the dispute via facsimile (1) within two (2) Business Days after delivery of the applicable notice giving rise to such dispute to the Company or such Holder (as the case may be), or (2) if no notice gave rise to such dispute, at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to resolve such dispute relating to such Closing Bid Price, Closing Sale Price, such Conversion Price, such such fair market value (as the case may be) by 5:00 p.m. (New York time) on the third (3rd) Business Day following such delivery by the Company or such Holder (as the case may be) of such dispute to the Company or such Holder (as the case may be), then such Holder shall select an independent, reputable investment bank to resolve such dispute.

(ii) Such Holder and the Company shall each deliver to such investment bank (1) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 20(a), and (2) written documentation supporting its position with respect to such dispute, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such investment bank (the "**Dispute Submission Deadline**") (the documents referred to in the immediately preceding clauses (1) and (2) are collectively referred to herein as the "**Required Dispute Documentation**") (it being understood and agreed that, if either such Holder or the Company fails to so deliver all of the Required Dispute Documentation by the Dispute Submission Deadline, then the party who fails to so submit all of the Required Dispute Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such investment bank with respect to such dispute and such investment bank shall resolve such dispute based solely on the Required Dispute Documentation that was delivered to such investment bank prior to the Dispute Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such investment bank, neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such investment bank in

connection with such dispute (other than the Required Dispute Documentation).

(iii) The Company and such Holder shall use their respective commercial best efforts to cause such investment bank to determine the resolution of such dispute and notify the Company and such Holder of such resolution no later than ten (10) Business Days immediately following the Dispute Submission Deadline. The fees and expenses of such investment bank shall be borne solely by the Company, and such investment bank's resolution of such dispute shall be final and binding upon all parties absent manifest error.

(b) Disputes Over Arithmetic Calculation of the Conversion Rate.

(i) In the case of a dispute as to the arithmetic calculation of a Conversion Rate, the Company or such Holder (as the case may be) shall submit the disputed arithmetic calculation via facsimile (1) within two (2) Business Days after delivery of the applicable notice giving rise to such dispute to the Company or such Holder (as the case may be), or (2) if no notice gave rise to such dispute, at any time after such Holder learned of the circumstances giving rise to such dispute. If such Holder and the Company are unable to resolve such disputed arithmetic calculation of such Conversion Rate by 5:00 p.m. (New York time) on the third (3rd) Business Day following such delivery by the Company or such Holder (as the case may be) of such disputed arithmetic calculation, then such Holder shall select an independent, reputable accountant or accounting firm to perform such disputed arithmetic calculation.

(ii) Such Holder and the Company shall each deliver to such accountant or accounting firm (as the case may be) (1) a copy of the initial dispute submission so delivered in accordance with the first sentence of this Section 20(a), and (2) written documentation supporting its position with respect to such disputed arithmetic calculation, in each case, no later than 5:00 p.m. (New York time) by the fifth (5th) Business Day immediately following the date on which such Holder selected such accountant or accounting firm (as the case may be) (the "**Submission Deadline**") (the documents referred to in the immediately preceding clauses (1) and (2) are collectively referred to herein as the "**Required Documentation**") (it being understood and agreed that if either such Holder or the Company fails to so deliver all of the Required Documentation by the Submission Deadline, then the party who fails to so submit all of the Required Documentation shall no longer be entitled to (and hereby waives its right to) deliver or submit any written documentation or other support to such accountant or accounting firm (as the case may be) with respect to such disputed arithmetic calculation and such accountant or accounting firm (as the case may be) shall perform such disputed arithmetic calculation based solely on the Required Documentation that was delivered to such accountant or accounting firm (as the case may be) prior to the Submission Deadline). Unless otherwise agreed to in writing by both the Company and such Holder or otherwise requested by such accountant or accounting firm (as the case may be), neither the Company nor such Holder shall be entitled to deliver or submit any written documentation or other support to such accountant or accounting firm (as the case may be) in connection with such disputed arithmetic calculation of the Conversion Rate (other than the Required Documentation).

(iii) The Company and such Holder shall use their respective commercial best efforts to cause such accountant or accounting firm (as the case may be) to perform such disputed arithmetic calculation and notify the Company and such Holder of the results no later than ten (10) Business Days immediately following the Submission Deadline. The fees and expenses of such accountant or accounting firm (as the case may be) shall be borne solely by the Company, and such accountant's or accounting firm's (as the case may be) arithmetic calculation shall be final and binding upon all parties absent manifest error.

(c) Miscellaneous. The Company expressly acknowledges and agrees that (i) this Section 20 constitutes an agreement to arbitrate between the Company and such Holder (and constitutes an arbitration agreement) under § 7501, et seq. of the New York Civil Practice Law and Rules ("**CPLR**") and that each party shall be entitled to compel arbitration pursuant to CPLR § 7503(a) in order to compel compliance with this Section 20, (ii) the terms of this Certificate of Designations and each other applicable Transaction Document shall serve as the basis for the selected investment bank's resolution of the applicable dispute, such investment bank shall be entitled (and is hereby expressly authorized) to make all findings, determinations and the like that such investment bank determines are required to be made by such investment bank in connection with its resolution of such dispute and in resolving such dispute such investment bank shall apply such findings, determinations and the like to the terms of this Certificate of Designation and any other applicable Transaction Documents, (iii) the terms of this Certificate of Designation and each other applicable Transaction Document shall serve as the basis for the selected accountant's or accounting firm's performance of the applicable arithmetic calculation, (iv) for clarification purposes and without implication that the contrary would otherwise be true, disputes relating to matters described in Section 20(a) shall be governed by Section 20(a) and not by Section 20(b), (v) such Holder (and only such Holder), in its sole discretion, shall have the right to submit any dispute described in this Section 20 to any state or federal court sitting in The City of New York, Borough of Manhattan in lieu of utilizing the

procedures set forth in this Section 20 and (vi) nothing in this Section 20 shall limit such Holder from obtaining any injunctive relief or other equitable remedies (including, without limitation, with respect to any matters described in Section 20(a) or Section 20(b)).

21. Certain Defined Terms. For purposes of this Certificate of Designation, the following terms shall have the following meanings:

(a) “**1934 Act**” means the Securities Exchange Act of 1934, as amended.

(b) “**Affiliate**” as applied to any Person, means any other Person directly or indirectly controlling, controlled by, or under common control with, that Person. For the purposes of this definition, “**control**” (including, with correlative meanings, the terms “**controlling**”, “**controlled by**” and “**under common control with**”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that Person, whether through the ownership of voting securities or by contract or otherwise. For purposes of this definition, a Person shall be deemed to be “**controlled by**” a Person if such latter Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors of such former Person.

(c) “**Base Amount**” means, with respect to each Preferred Share, as of the applicable date of determination, the sum of (1) the Stated Value thereof, plus (2) the Unpaid Dividend Amount thereon as of such date of determination.

(d) “**Bloomberg**” means Bloomberg, L.P.

(e) “**Business Day**” means any day other than Saturday, Sunday or other day on which commercial banks in The City of New York are authorized or required by law to remain closed.

(f) “**Closing Bid Price**” and “**Closing Sale Price**” means, for any security as of any date, the last closing bid price and last closing trade price, respectively, for such security on the Principal Market, as reported by Bloomberg, or, if the Principal Market begins to operate on an extended hours basis and does not designate the closing bid price or the closing trade price (as the case may be) then the last bid price or last trade price, respectively, of such security prior to 4:00:00 p.m., New York time, as reported by Bloomberg, or, if the Principal Market is not the principal securities exchange or trading market for such security, the last closing bid price or last trade price, respectively, of such security on the principal securities exchange or trading market where such security is listed or traded as reported by Bloomberg, or if the foregoing do not apply, the last closing bid price or last trade price, respectively, of such security in the over-the-counter market on the electronic bulletin board for such security as reported by Bloomberg, or, if no closing bid price or last trade price, respectively, is reported for such security by Bloomberg, the average of the bid prices, or the ask prices, respectively, of any market makers for such security as reported in the “pink sheets” by OTC Markets Group Inc. (formerly Pink Sheets LLC). If the Closing Bid Price or the Closing Sale Price cannot be calculated for a security on a particular date on any of the foregoing bases, the Closing Bid Price or the Closing Sale Price (as the case may be) of such security on such date shall be the fair market value as mutually determined by the Company and the applicable Holder. If the Company and such Holder are unable to agree upon the fair market value of such security, then such dispute shall be resolved in accordance with the procedures in Section 20. All such determinations shall be appropriately adjusted for any stock dividend, stock split, stock combination or other similar transaction during such period.

(g) “**Common Stock**” means (i) the Company’s shares of common stock, par value \$0.001 per share, and (ii) any capital stock into which such common stock shall have been changed or any share capital resulting from a reclassification of such common stock.

(h) “**Conversion Price**” means, with respect to each Preferred Share, as of any Conversion Date or other applicable date of determination, the lower of: (i) \$1.05 per share and (ii) on and after June 1, 2017, the Closing Bid Price on the day immediately prior to the date of Conversion (but not less than \$0.10 per share).

(i) “**Convertible Securities**” means any stock or other security (other than Options) that is at any time and under any circumstances, directly or indirectly, convertible into, exercisable or exchangeable for, or which otherwise entitles the holder thereof to acquire, any shares of Common Stock.

(j) “**Eligible Market**” means The New York Stock Exchange, the NYSE MKT, The Nasdaq Capital Market, the Nasdaq Global Select Market, the Nasdaq Global Market, the OTCQX, or the OTCQB (or any successor thereto).

(k) “**Fundamental Transaction**” means that (i) the Company or any of its Subsidiaries shall, directly

or indirectly, in one or more related transactions, (A) consolidate or merge with or into (whether or not the Company or any of its Subsidiaries is the surviving corporation) any other Person, or (B) sell, lease, license, assign, transfer, convey or otherwise dispose of all or substantially all of its respective properties or assets to any other Person, or (C) allow any other Person to make a purchase, tender or exchange offer that is accepted by the holders of more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the Person or Persons making or party to, or associated or affiliated with the Persons making or party to, such purchase, tender or exchange offer), or (D) consummate a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with any other Person whereby such other Person acquires more than 50% of the outstanding shares of Voting Stock of the Company (not including any shares of Voting Stock of the Company held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination), or (E) reorganize, recapitalize or reclassify the Common Stock, or (ii) any “person” or “group” (as these terms are used for purposes of Sections 13(d) and 14(d) of the 1934 Act and the rules and regulations promulgated thereunder) is or shall become the “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of 50% of the aggregate ordinary voting power represented by issued and outstanding Voting Stock of the Company.

(l) “**Liquidation Event**” means, whether in a single transaction or series of transactions, the voluntary or involuntary liquidation, dissolution or winding-up of the Company or such Subsidiaries the assets of which constitute all or substantially all of the assets of the business of the Company and its Subsidiaries, taken as a whole.

(m) “**Options**” means any rights, warrants or options to subscribe for or purchase shares of Common Stock or Convertible Securities.

(n) “**Parent Entity**” of a Person means an entity that, directly or indirectly, controls the applicable Person and whose common stock or equivalent equity security is quoted or listed on an Eligible Market, or, if there is more than one such Person or Parent Entity, the Person or Parent Entity with the largest public market capitalization as of the date of consummation of the Fundamental Transaction.

(o) “**Person**” means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity or a government or any department or agency thereof.

(p) “**Principal Market**” means The NASDAQ Capital Market.

(q) “**Purchase Date**” means the Closing Date (as defined in the Subscription Agreement).

(r) “**Securities**” shall have the meaning ascribed to it in the Subscription Agreement.

(s) “**Stated Value**” shall mean \$10.00 per share, subject to adjustment for stock splits, stock dividends, recapitalizations, reorganizations, reclassifications, combinations, subdivisions or other similar events occurring after the Initial Issuance Date with respect to the Preferred Shares.

(t) “**Subscription Agreement**” means that certain Subscription Agreement by and among the Company and the initial holders of Preferred Shares, dated as of the Purchase Date, as may be amended from time in accordance with the terms thereof.

(u) “**Subsidiaries**” shall have the meaning as set forth in the Subscription Agreement.

(v) “**Successor Entity**” means the Person (or, if so elected by the Required Holders, the Parent Entity) formed by, resulting from or surviving any Fundamental Transaction or the Person (or, if so elected by the Required Holders, the Parent Entity) with which such Fundamental Transaction shall have been entered into.

(w) “**Trading Day**” means, as applicable, (i) with respect to all price determinations relating to the Common Stock, any day on which the Common Stock is traded on the Principal Market, or, if the Principal Market is not the principal trading market for the Common Stock, then on the principal securities exchange or securities market on which the Common Stock is then traded, provided that “Trading Day” shall not include any day on which the Common Stock is scheduled to trade on such exchange or market for less than 4.5 hours or any day that the Common Stock is suspended from trading during the final hour of trading on such exchange or market (or if such exchange or market does not designate in advance the closing time of trading on such exchange or market, then during the hour ending at 4:00:00 p.m., New York time) unless such day is otherwise designated as a Trading Day in writing by the Required Holders or (ii) with respect to all determinations other than price

determinations relating to the Common Stock, any day on which The New York Stock Exchange (or any successor thereto) is open for trading of securities.

(x) “**Transaction Documents**” shall have the meaning ascribed to it in the Subscription Agreement.

(y) “**Unpaid Dividend Amount**” means, as of the applicable date of determination, with respect to each Preferred Share, all accrued and unpaid Dividends on such Preferred Share.

(z) “**Voting Stock**” of a Person means capital stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power to elect, or the general power to appoint, at least a majority of the board of directors, managers, trustees or other similar governing body of such Person (irrespective of whether or not at the time capital stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

22. Disclosure. Upon receipt or delivery by the Company of any notice in accordance with the terms of this Certificate of Designation, unless the Company has in good faith determined that the matters relating to such notice do not constitute material, non-public information relating to the Company or any of its Subsidiaries, the Company shall simultaneously with any such receipt or delivery publicly disclose such material, non-public information on a Current Report on Form 8-K or otherwise. In the event that the Company believes that a notice contains material, non-public information relating to the Company or any of its Subsidiaries, the Company so shall indicate to each Holder contemporaneously with delivery of such notice, and in the absence of any such indication, each Holder shall be allowed to presume that all matters relating to such notice do not constitute material, non-public information relating to the Company or its Subsidiaries. Nothing contained in this Section 22 shall limit any obligations of the Company, or any rights of any Holder, under the Subscription Agreement.

* * * * *

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Designation of Series G Convertible Preferred Stock of Function(x) Inc. to be signed by its Chief Executive Officer on this 1st day of May, 2017.

FUNCTION(X) INC.

By: _____

Name: Robert F.X. Sillerman

Title: Chief Executive Officer

EXHIBIT I

**SERIES G CONVERTIBLE PREFERRED STOCK
CONVERSION NOTICE**

Reference is made to the Certificate of Designation of Rights, Powers, Preferences, Privileges and Restrictions of the Series G Convertible Preferred Stock of Function(x) Inc. (the “**Certificate of Designation**”). In accordance with and pursuant to the Certificate of Designation, the undersigned hereby elects to convert the number of shares of Series G Convertible Preferred Stock, \$0.001 par value per share (the “**Preferred Shares**”), of Function(x) Inc., a Delaware corporation (the “**Company**”), indicated below into shares of common stock, \$0.001 par value per share (the “**Common Stock**”), of the Company, as of the date specified below.

Date of Conversion:___

Number of Preferred Shares to be converted:___

Share certificate no(s). of Preferred Shares to be converted:___

Tax ID Number (If applicable): ___

Conversion Price:_____

Number of shares of Common Stock to be issued:___

Please issue the shares of Common Stock into which the Preferred Shares are being converted in the following name and to the following address:

Issue to: __

Address: _____

Telephone Number: _____

Facsimile Number: __

Holder: __

By: __

Title: __

Dated: _____

Account Number (if electronic book entry transfer): __

Transaction Code Number (if electronic book entry transfer): __

EXHIBIT II

ACKNOWLEDGMENT

The Company hereby acknowledges this Conversion Notice and hereby directs _____ to issue the above indicated number of shares of Common Stock in accordance with the Irrevocable Transfer Agent Instructions dated _____, 201[___] from the Company and acknowledged and agreed to by _____.

[_____]

By: _____

Name:

Title:

AMENDMENT AND MUTUAL RELEASE AGREEMENT

This AMENDMENT AND MUTUAL RELEASE AGREEMENT (this “Agreement”), dated as of July [●], 2017, is by and between Function(x) Inc., a Delaware corporation (the “Company”) and the other signatories hereto (each, a “Subscriber” and collectively, the “Subscribers”). The Company and the Subscribers are hereinafter jointly referred to as “Parties” and individually, a “Party.”

RECITALS

WHEREAS, on or about May 2, 2017, in connection with a private placement held by the Company, each Subscriber previously entered into a Subscription Agreement (the “Subscription Agreement”) pursuant to which such Subscriber purchased from the Company certain shares of Series G Stock, par value \$0.001 per share (the “Series G Stock”), for the aggregate purchase price set forth opposite such Subscriber’s name on Exhibit A attached hereto under the column heading “Initial Investment Amount” (the “Initial Investment Amount”);

WHEREAS, the Company and the Subscribers desire to (i) amend and modify the terms of the Series G Stock pursuant to the Amended and Restated Certificate of Designation of the Series G Stock attached hereto as Exhibit B (the “A&R Series G Certificate”), as set forth in Section 1, and (ii) agree to certain put and call rights with respect to the Series G Stock, as set forth in Section 2 (the “Put and Call Rights”);

WHEREAS, the Company desires to make certain Cash Payments (as defined below) to the Subscribers in accordance with Section 3, and in connection therewith, the Parties have entered into an Escrow Agreement, attached hereto as Exhibit C (the “Escrow Agreement”), pursuant to which the Company has agreed to deposit with the Escrow Agent the Escrow Funds (each as defined in the Escrow Agreement), to be released pursuant to and in accordance with the terms of the Escrow Agreement;

WHEREAS, in consideration of the Parties’ agreements contained herein with respect to the A&R Series G Certificate, the Put and Call Rights, the Cash Payment and the Escrow Agreement, the Company and the Subscribers desire to compromise and settle any and all claims between them relating to the Released Subscription Claims (as defined below) and release and forever discharge each other from all duties, obligations, covenants and representations under or arising out of the Released Subscription Claims and to relinquish all of their respective rights, powers, privileges, interests and claims under or arising out of the Released Subscription Claims, pursuant to and in accordance with the terms of this Agreement.

AGREEMENTS

NOW THEREFORE, in consideration of the foregoing and the mutual releases and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Amendment to Series G Stock Certificate of Designation. The Company and the Subscribers hereby agree to amend the terms of the Series G Stock pursuant to the A&R Series G Certificate, in order to fix the conversion rate for each share of the Series G Stock to ten (10) shares of the Company’s common stock and make the other amendments set forth therein. Each Subscriber hereby consents to, approves and authorizes the A&R Series G Certificate in all respects and hereby waives and foregoes all rights, objections, provisions and formalities relating to such consent and approval as may be provided for under applicable law or in the Company’s Certificate of Incorporation, the Certificate of Designation of Rights, Powers, Preferences, Privileges and Restrictions of the Series G Convertible Preferred Stock of the Company or any other formation or charter document of the Company.

2. Put and Call of Series G Stock.

(a) *Put Right*. At any time, and from time to time, following the six (6) month anniversary of the date of this Agreement, any Subscriber holding Series G Stock may elect to sell to the Company all or any percentage of such Series G Stock at a price equal to \$100 per share of the Series G Stock (the “Put Price”). Such Put Price shall accrete at a rate of ten percent (10%) per annum for a period not to exceed five (5) years.

(b) *Call Right*. At any time, and from time to time, following the date of this Agreement and provided the Company has timely made all payment due under Section 3 below, the Company may elect to purchase all or any percentage of Series G Shares held by any Subscriber at a price equal to \$105 per share of Series G Stock (the “Call Price”). Such Call Price shall accrete at a rate of ten percent (10%) per annum for a period not to exceed five (5) years.

(c) *Procedure*. If a Subscriber or the Company wishes to exercise his, her or its Put Right or Call Right, respectively, pursuant to this Section 1 (the “Exercising Party”), such Exercising Party shall deliver to the other Party (the “Non-Exercising Party”) written notice at least five (5) calendar days prior to the date of such exercise, specifying the number of shares of Common Stock to be included in such exercise. The closing of any sale of Series G Stock pursuant to this Section 2 shall take place no later than thirty (30) days following receipt of such written notice. Each Subscriber shall at the closing of any purchase and sale consummated pursuant to this Section 2, represent and warrant to the Company that (i) such Subscriber has full right, title and interest in and to the Shares, (ii) such Subscriber has all the necessary power and authority and has taken all necessary action to sell such Subscriber’s Series G Stock as contemplated by this Section 2, and (iii) the Series G Stock being sold is free and clear of any and all mortgages, pledges, security interests, options, rights of first offer, encumbrances or other restrictions or limitations of any nature whatsoever other than those arising as a result of or under the terms of this Agreement or arising under any securities laws.

3. Cash Payments to Subscribers. In consideration of the mutual release contained in Section 4 and the other agreements contained herein, the Company shall deposit funds with the Escrow Agent and instruct the Escrow Agent to pay to each Subscriber that has executed and delivered this Agreement to the Company by wire transfer of immediately available funds, an aggregate amount equal to ninety percent (90%) of such Subscriber’s Initial Investment Amount according to the following schedule and as set forth on Exhibit

A attached hereto (the “Cash Payments”):

- (a) Twenty-two and one-half percent (22.5%) of each Subscriber’s Initial Investment Amount has previously been paid to the Escrow Agent;
- (b) Twenty-two and one-half percent (22.5%) of each Subscriber’s Initial Investment Amount will be paid within forty (40) calendar days of the date hereof;
- (c) Twenty-two and one-half percent (22.5%) of each Subscriber’s Initial Investment Amount will be paid within eighty (80) calendar days of the date hereof; and
- (d) Twenty-two and one-half percent (22.5%) of each Subscriber’s Initial Investment Amount will be paid within one hundred and twenty (120) calendar days of the date hereof.

If any payment is not timely made, than all the payments under this Section 3 shall immediately come due payable.

In each case of (a)-(d) of this Section 3, such payments will be delivered to each Subscriber pursuant to the wire instructions set forth on such Subscriber’s signature page hereto. The Parties acknowledge and agree that the Cash Payment funds will only be released to the Subscribers by the Escrow Agent in accordance with the payment schedule set forth in this Section 3. Notwithstanding anything herein to the contrary, the Company’s obligations to make the Cash Payments and the authority of the Escrow Agent to distribute the proceeds of such Cash Payments to the subscribers shall commence the sooner of (i) filing and effectiveness of the A&R Series G Certificate (the Company shall give notice to the Escrow Agent as soon as such occurrence occurs); or (ii) five days after delivery to the Company of copies of this agreement executed by a sufficient number of Subscribers to constitute the Required Holders under the original Certificate of Designation of the Series G Stock. The Company represents to the Subscribers that it has already obtained the irrevocable consent of Robert F.X. Sillerman to the amendment of the A&R Series G Certificate.

In the event the Escrow Agent is not authorized to release the first payment to the Subscribers who execute this Agreement on or before August 2, 2017 this agreement shall be null and void ab initio.

4. Settlement; Mutual Release.

(a) *Settlement.* By execution of this Agreement, each Subscriber acknowledges and confirms that, effective upon the indefeasible payment of all the amounts payable by the Company pursuant to Section 3(a) through 3(d) above, all obligations and liabilities of the Company and its Releasees (as defined below) relating to the Released Subscription Claims shall be deemed to be fully satisfied. Each of the Parties acknowledges that the mutual release contained in Section 4(b) (the “Mutual Release”) constitutes a material inducement upon which the other Parties are relying and will rely in entering this Agreement, and each Party agrees that any breach by such Party of the Mutual Release shall be deemed to constitute a material breach of this Agreement by such Party. The Parties further acknowledge and agree that this Agreement may be plead or asserted by or on behalf of any Party as a defense and a complete bar to any action or claim that may be brought against or involving such Party by any other Party or person purporting to act on behalf of any other Party with respect to the Released Subscription Claims.

(b) *Mutual Release.* The Company hereby releases and discharges, unconditionally, absolutely and forever, each Subscriber, and their respective Releasees (as defined below) and each Subscriber hereby releases and discharges, unconditionally, absolutely and forever, the Company and its Releasees, from and against any and all actions, causes of action, suits, liabilities, losses, costs, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands whatsoever of every kind and description, whether arising under common law, rule, regulation, statute, in law, admiralty or equity, against the Parties and their Releasees, that the undersigned, on its own behalf and on behalf of its heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, by reason of or arising out of the Subscription Agreement, the Offering (as defined in the Subscription Agreement), the issuance and sale of the Series G Stock and any and all disclosures, representations and/or warranties made in connection therewith and any and all matters related to any of the forgoing, whether or not known or unknown (collectively, the “Released Subscription Claims”); provided, however, this paragraph does not and is not intended to release any Party from its obligations under (i) this Agreement, (ii) the Escrow Agreement, (iii) the A&R Series G Certificate, (iv) any other agreement with the Company or available to a Subscriber with respect to any debt obligation or security of the Company other than the Series G Stock, or (v) or any indemnification rights available to such Subscriber under any agreement or at law or equity. For purposes hereof, the term “Releasees” means, with respect to any Party, such Party’s heirs, executors, administrators, parent company, holding company, subsidiaries, successors, assigns, predecessors, past and present, officers, directors, principals, control persons, past and present employees and registered representatives, insurers, representatives, and attorneys.

(c) Return of Cash Payments. In the event a Subscriber is required for any reason to return any portion of the Cash Payments to be made pursuant to Section 3 to the Company, any successor of the Company, bankruptcy trustee, or any other person or entity, then such Subscriber’s releases, waivers and settlements contained in this Agreement shall be null and void ab initio and such Subscriber will be restored to all of such Subscriber’s rights, claims, and entitlements as they existed prior to the execution of this Agreement.

(d) Credit for Payments. In the event that the Company defaults hereunder and the Subscribers’ releases set forth in Section 4(b) above are voided as a result of such default, then the Company shall be entitled to a dollar-for-dollar credit against any future claim or amount payable to the Subscribers’ from the Company equal to such amount actually paid to the Subscribers hereunder; provided, that such credit shall be reduced by any amount a Subscriber is required for any reason to return to the Company, any successor of the Company, bankruptcy trustee, or any other person or entity; provided, further, that each Subscriber’s future claims against the Company shall be limited in an amount equal to such Subscriber’s initial investment pursuant to the Subscription Agreement (net of any amounts paid to such Subscriber pursuant to this Agreement).

5. Representations and Warranties.

(a) The Company hereby represents and warrants to each Subscriber and each Subscriber, for itself only, hereby represents and warrants to the Company that:

(i) Such Party has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and the transactions contemplated hereby, and, if such Party is a legal entity, has taken or caused to be taken all necessary action to authorize the execution, delivery and performance of this Agreement and the transactions contemplated hereby, and the representative executing this Agreement on its behalf is authorized to do so.

(ii) This Agreement constitutes the valid and legally binding obligations of such Party enforceable against such Party in accordance with its terms, except as enforceability may be limited by principles of equity or by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally.

(iii) Such Party is the sole owner of the actual or alleged claims, rights, causes of action, and other matters which are released by it under Section 4 and has not sold, assigned, pledged, transferred (or purported to have sold, assigned, pledged, or transferred), whether by written or oral agreement, operation of law or otherwise, any right, title, or interest in any claim covered by the Mutual Release.

(iv) Except as provided herein, there is no restriction, direct or indirect, on the agreements made or the actions taken or to be taken by it pursuant to this Agreement and there is no litigation pending or threatened against such Party that would affect the right or ability of such Party to consummate the transactions contemplated hereby.

(b) Each Subscriber further represents and warrants to the Company that such Subscriber is the sole beneficial and record owner of all of the Series G Stock issued to such Subscriber pursuant to such Subscriber's Subscription Agreement, free and clear of all liens, claims, pledges, charges, defects in title, security interests or encumbrances, whether arising under contract, by operation of law or otherwise.

6. Confidentiality. The Parties understand and agree that this Agreement, including facts and circumstances and all matters related to the subject of this Agreement, and the terms or substance of this Agreement, shall forever be deemed confidential between the Parties. Except for tax authorities, accountants and attorneys, and as required under the statutes, rules or regulations of any federal or state government, government agency, court of competent jurisdiction or securities industry self-regulatory organization, of which either Party is a member, the Parties shall not disclose or divulge this information to others unless required by lawful order of any court of competent jurisdiction and so as to enforce the instant agreement. The Parties agree that they shall refrain from making any disparaging remarks concerning the other Party. Any non-disclosure provision in this Agreement does not prohibit or restrict the Company or the Subscriber (or their respective attorneys) from responding to any inquiry about this settlement or its underlying facts by the Securities and Exchange Commission, the Financial Industry Regulatory Authority, or any other self-regulatory organization. The restriction in this section shall no longer apply upon the sooner of (i) two years; or (ii) the public disclosure of the terms of this Agreement by the Company. The Company undertakes to make such disclosures of this Agreement and the transaction contemplate herein with the Securities and Exchange Commission as required by applicable law.

7. Fees and Expenses. Each of the Parties will bear and is responsible for its own costs, expenses and attorneys' fees incurred in connection with the negotiations, preparation, execution and implementation of this Agreement and the transactions contemplated hereby.

8. Acknowledgements. Each Party acknowledges and agrees that: (a) in making its decision to execute this Agreement and to enter into the transactions contemplated hereby and thereby, such Party has relied and will rely solely upon the results of its independent investigation, due diligence review and verification and the representations, warranties, terms and conditions of this Agreement, and will not be entitled to rely on any other statements or advice from the other Parties or their respective affiliates or representatives; (b) each other Party has not made and is not making any express or implied representations or warranties to the other Parties, except as expressly set forth in this Agreement; (c) this Agreement is executed voluntarily by it, without duress or undue influence on the part of, or on behalf of it; (d) it has had the opportunity to receive, and has in fact received, representation by counsel of its choice in the negotiation for, and in the performance and execution of, this Agreement; (e) it has read this Agreement, had the terms of this Agreement fully explained to it by its counsel and is fully aware of the contents of this Agreement and the legal effect thereof, and (f) the consideration upon receipt by such Party will be actual and adequate. Each Subscriber further acknowledges and agrees that, in making its decision to execute this Agreement, (x) it is not relying on the Company to provide it with any information, facts, projections, forecasts, analysis, documents or materials that may be relevant to such decision and is making its own decision without any such reliance, and (y) the Company has made no representation as to the Company's financial condition or the treatment of the payments to be made hereunder by any court of competent jurisdiction.

9. Tax Liability. No Party has made any promises or representations to another Party regarding its or their tax liability, if any, for the payments made in accordance with this Agreement. Each Party is solely responsible for accounting for that Party's tax liability and complying with all tax codes and regulations with respect to the receipt of the funds paid and other consideration made pursuant to this Agreement

10. Jointly Drafted. The Parties and their respective counsel mutually contributed to the preparation of this Agreement and have had the opportunity to review and revise same. No provision of this Agreement shall be construed against any Party because that Party or its counsel drafted the provision. All terms of this Agreement shall be construed equally as to all Parties.

11. Entire Agreement. This Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties and supersedes and replaces all prior negotiations, proposed agreement and agreements, written or oral. Each of the Parties hereto acknowledges that none of the Parties hereto, agents or counsel of any Party, has made any promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject hereto, to induce it to execute this Agreement and

acknowledges and warrants that it is not executing this Agreement in reliance on any promise, representation or warranty not contained herein.

12. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their Releasees and no other person or entity shall have any right of action hereon, right to claim any right or benefit from the terms contained herein, or be deemed a third party beneficiary hereunder.

13. Notices. Any notice provided for herein shall be in writing and shall be deemed sufficiently given on the earlier to occur of the date of personal delivery, the date of receipt or three (3) days after posting by overnight courier or registered or certified mail, postage prepaid, addressed as follows:

If to the Company: Function(x) Inc.
902 Broadway, 11th Floor
New York, New York 10010
Telephone No.:(212) 231-0092
Attention: Mitchell Nelson
E-mail: Mitchell@functionxinc.com

If to any Subscriber to the respective address set forth on the counterpart signature page of this Agreement signed by such Subscriber.

14. Amendments. This Agreement may not be modified or amended in any manner except by an instrument in writing specifically stating that it is a supplement, modification or amendment to the Agreement and signed by each of the Parties hereto against whom such modification or amendment shall be claimed to be effective.

15. Enforceability. Should any provision of this Agreement be declared or be determined by any court or tribunal to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be severed and deemed not to be part of this Agreement.

16. Governing Law; Consent to Jurisdiction. This Agreement shall be interpreted solely pursuant to the laws of the State of New York, exclusive of its conflicts of laws principles. Each of the Parties hereto irrevocably submits to the exclusive jurisdiction of the courts of the State of New York, for the purposes of any suit, action, or other proceeding arising out of this Agreement or any transaction contemplated hereby.

17. WAIVER OF JURY TRIAL. THE PARTIES WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT AND AGREE THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

18. Counterparts; Headings. This Agreement may be executed in facsimile counterparts, each of which, when all Parties have executed at least one such counterpart, shall be deemed an original, with the same force and effect as if all signatures were appended to one instrument, but all of which together shall constitute one and the same Agreement. The headings contained in this Agreement are inserted only for reference as a matter of convenience and in no way define, limit or describe the scope or intent of this Agreement, and will not affect in any way the construction, meaning or interpretation of this Agreement.

19. Further Assurances. Each Party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other Party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

[signature pages follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the date first above written.

Function(x) Inc.

By: ___
Robert F.X. Sillerman
Chief Executive Officer

Signature of the Subscriber
(Entities please provide the signature of the
Subscriber's duly authorized signatory.)

Name of the Subscriber [please print]

Name of Signatory (Entities only)

Title of Signatory (Entities only)

\$ _____
Subscriber's Initial Investment Amount

Wire Instructions: [●]

Exhibit A

Subscriber	Subscriber's Initial Investment Amount	First Payment (previously made)	Second Payment (within 40 calendar days of the date hereof)	Third Payment (within 80 calendar days of the date hereof)	Fourth Payment (within 120 calendar days of the date hereof)
Jim Christodoulis	\$	\$	\$	\$	\$
Kevin J. Poor	\$	\$	\$	\$	\$
Ahaka Acquisitions Inc.	\$	\$	\$	\$	\$
Acquisition Group Limited	\$	\$	\$	\$	\$
John Ford	\$	\$	\$	\$	\$
Paradox Capital Partners LLC	\$	\$	\$	\$	\$
Michael H. Ference	\$	\$	\$	\$	\$
John O'Rourke Sr.	\$	\$	\$	\$	\$
ATG Capital LLC	\$	\$	\$	\$	\$
MH Investments Trust	\$	\$	\$	\$	\$
Horberg Enterprises LP	\$	\$	\$	\$	\$
John Lemak IRA	\$	\$	\$	\$	\$
JSL Kids Partners	\$	\$	\$	\$	\$
Rexford Capital LLC	\$	\$	\$	\$	\$
Iroquois Master Fund Ltd	\$	\$	\$	\$	\$
Iroquois Capital Investment Group LLC	\$	\$	\$	\$	\$

Osher Capital Partners LLC	\$	\$	\$	\$	\$
Alpha Capital Anstalt	\$	\$	\$	\$	\$
Richard Molinsky	\$	\$	\$	\$	\$
Total	\$	\$	\$	\$	\$