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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

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**FORM 8-K**

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**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 22, 2021**

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**Caribou Biosciences, Inc.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction  
of incorporation)

**001-40631**  
(Commission  
File Number)

**45-3728228**  
(IRS Employer  
Identification Number)

**2929 7th Street, Suite 105  
Berkeley, California 94710**  
(Address of principal executive offices, including Zip Code)

**Registrant's telephone number, including area code: (510) 982-6030**

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Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

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

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

<u>Title of each class</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.0001 par value per share	CRBU	The Nasdaq Global Select Market

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

Emerging growth company

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

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### **Item 3.02 Unregistered Sales of Equity Securities.**

On July 27, 2021, Caribou Biosciences, Inc. (the “Company”) issued 26,234,654 shares of its common stock, par value \$0.0001 per share (“Common Stock”), upon the conversion (the “Conversion”) of all outstanding shares of its Series A, A-1, B, and C convertible preferred stock (collectively, the “Preferred Stock”). Conversion of the Preferred Stock into shares of Common Stock occurred automatically immediately prior to the closing of the Company’s initial public offering (the “Offering”). The shares of Common Stock issued in the Conversion were issued in reliance on the exemptions contained in Sections 3(a)(9) and 4(a)(2) of the Securities Act of 1933, as amended.

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

#### *Amended and Restated Employment Agreements*

On July 27, 2021, the Company entered into amended and restated employment agreements (the “A&R Employment Agreements”) with Rachel E. Haurwitz, Ph.D., the Company’s President and Chief Executive Officer, Steven B. Kanner, Ph.D., the Company’s Chief Scientific Officer, Barbara G. McClung, the Company’s Chief Legal Officer and Corporate Secretary, and Jason V. O’Byrne, the Company’s Chief Financial Officer.

A description of the A&R Employment Agreements is set forth in the [final prospectus](#) filed by the Company with the U.S. Securities and Exchange Commission on July 23, 2021 pursuant to Rule 424(b) under the Securities Act of 1933, as amended, relating to the Company’s Registration Statement on Form S-1, as amended (File No. 333- 257604) and its Registration Statement on Form S-1 (File No. 333- 258105) (the “Prospectus”) in the section titled “Executive and Director Compensation.”

Copies of the A&R Employment Agreements are filed herewith as Exhibits 10.1, 10.2, 10.3, and 10.4 and are incorporated herein by reference.

#### *2021 Equity Incentive Plan*

Effective as of July 22, 2021, the Company adopted the 2021 Equity Incentive Plan (the “2021 Plan”). A description of the 2021 Plan is set forth in the section of the Prospectus titled “Executive and Director Compensation.”

A copy of the 2021 Plan is filed herewith as Exhibit 10.5 and is incorporated herein by reference.

#### *2021 Employee Stock Purchase Plan*

Effective as of July 22, 2021, the Company adopted the 2021 Employee Stock Purchase Plan (the “2021 ESPP”). A description of the 2021 ESPP is set forth in the section of the Prospectus titled “Executive and Director Compensation.”

A copy of the 2021 ESPP is filed herewith as Exhibit 10.6 and is incorporated herein by reference.

#### *Resignation of Director*

Effective as of July 27, 2021, Mr. Jeffrey Long-McGie resigned from the Company’s board of directors in connection with the closing of the Offering. Mr. Long-McGie’s decision to resign as a director was previously announced in the Prospectus and was not the result of any disagreement with the Company on any matter relating to its operations, policies, or practices.

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

#### *Amended and Restated Certificate of Incorporation*

On July 26, 2021, the Company filed an amended and restated certificate of incorporation (the “A&R Certificate”) with the Delaware Secretary of State, which became effective on July 27, 2021. A description of the A&R Certificate is set forth in the section of the Prospectus titled “Description of Capital Stock.”

A copy of the A&R Certificate is filed herewith as Exhibit 3.1 and is incorporated herein by reference.

#### *Amended and Restated Bylaws*

Effective as of July 27, 2021, the Company adopted amended and restated bylaws (the “A&R Bylaws”). A description of the A&R Bylaws is set forth in the section of the Prospectus titled “Description of Capital Stock.”

A copy of the A&R Bylaws is filed herewith as Exhibit 3.2 and is incorporated herein by reference.

### Item 8.01 Other Events.

On July 27, 2021, the Company completed the Offering. The Company sold 19,000,000 shares of Common Stock at a price to the public of \$16.00 per share. The gross proceeds to the Company from the Offering were \$304.0 million, before deducting underwriting discounts and commissions and offering expenses payable by the Company. The Company has granted the underwriters a 30-day option to purchase up to an additional 2,850,000 shares of Common Stock at the initial public offering price, less the underwriting discounts and commissions.

### Item 9.01 Financial Statements and Exhibits.

<u>Exhibit No.</u>	<u>Description</u>
3.1	<a href="#"><u>Amended and Restated Certificate of Incorporation of Caribou Biosciences, Inc.</u></a>
3.2	<a href="#"><u>Amended and Restated Bylaws of Caribou Biosciences, Inc.</u></a>
10.1	<a href="#"><u>Officer Employment Agreement, dated July 27, 2021, by and between the Registrant and Rachel E. Haurwitz, Ph.D.</u></a>
10.2	<a href="#"><u>Officer Employment Agreement, dated July 27, 2021, by and between the Registrant and Steven B. Kanner, Ph.D.</u></a>
10.3	<a href="#"><u>Officer Employment Agreement, dated July 27, 2021, by and between the Registrant and Barbara G. McClung, J.D.</u></a>
10.4	<a href="#"><u>Officer Employment Agreement, dated July 27, 2021, by and between the Registrant and Jason V. O'Byrne, M.B.A.</u></a>
10.5	<a href="#"><u>2021 Equity Incentive Plan of the Registrant (incorporated by reference to Exhibit 99.6 to the Company's registration statement on Form S-8 (File No. 333-258173) filed with the Commission on July 26, 2021).</u></a>
10.6	<a href="#"><u>2021 Employee Stock Purchase Plan of the Registrant (incorporated by reference to Exhibit 99.7 to the Company's registration statement on Form S-8 (File No. 333-258173) filed with the Commission on July 26, 2021).</u></a>

**SIGNATURES**

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

**CARIBOU BIOSCIENCES, INC.**

Date: July 28, 2021

By: /s/ Rachel E. Haurwitz  
Rachel E. Haurwitz  
President and Chief Executive Officer

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**CARIBOU BIOSCIENCES, INC.**

Caribou Biosciences, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), does hereby certify as follows:

**FIRST:** That the name of the Corporation is Caribou Biosciences, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was October 28, 2011.

**SECOND:** That the Board of Directors of the Corporation, acting in accordance with the provisions of Sections 141 and 242 of the General Corporation Law of the State of Delaware (the "DGCL"), duly adopted resolutions proposing to amend and restate the Fourth Amended and Restated Certificate of Incorporation of the Corporation (the "Certificate of Incorporation"), declaring said amendment and restatement to be advisable and in the best interests of the Corporation and its stockholders, and authorizing the appropriate officers of the Corporation to solicit the consent of the stockholders therefore, and this Amended and Restated Certificate of Incorporation was approved by the holders of the requisite number of shares of stock of the Corporation in accordance with Section 228 of the DGCL.

**THIRD:** That this Amended and Restated Certificate of Incorporation has been duly adopted and approved by the Board of Directors and the stockholders of the Corporation in accordance with Sections 242 and 245 of the DGCL.

**FOURTH:** That the text of the Certificate of Incorporation as heretofore amended or supplemented is hereby amended and restated in its entirety to read as set forth in Exhibit A attached hereto and is incorporated herein by reference in its entirety. This Amended and Restated Certificate of Incorporation shall be effective as of 7:00 a.m. Eastern Time on July 27, 2021.

**IN WITNESS WHEREOF**, Caribou Biosciences, Inc. has caused this Amended and Restated Certificate of Incorporation to be signed by its President and Chief Executive Officer on this 26th day of July, 2021.

CARIBOU BIOSCIENCES, INC.

By: /s/ Rachel E. Haurwitz

Name: Rachel E. Haurwitz

Title: President and Chief Executive Officer

**AMENDED AND RESTATED**  
**CERTIFICATE OF INCORPORATION**  
**OF**  
**CARIBOU BIOSCIENCES, INC.**

ARTICLE I

The name of the corporation is Caribou Biosciences, Inc. (the "Corporation").

ARTICLE II

The address of the Corporation's registered office in the State of Delaware 3500 South DuPont Highway, City of Dover, County of Kent, Delaware 19901. The name of the registered agent at such address is Incorporating Services, Ltd.

ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law ("DGCL"). The Corporation is to have perpetual existence.

ARTICLE IV

A. The Corporation is authorized to issue two classes of stock to be designated, respectively, "Common Stock" and "Preferred Stock." The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 310,000,000, of which 300,000,000 shares shall be Common Stock (the "Common Stock"), each share having a par value of one-hundredth of one cent (\$0.0001), and 10,000,000 shares shall be Preferred Stock (the "Preferred Stock"), each share having a par value of one-hundredth of one cent (\$0.0001). Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any of the Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation with the power to vote thereon irrespective of the provisions of Section 242(b)(2) of the Delaware General Corporation Law or any successor provision thereof, and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor.

B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of the Corporation (the "Board") is hereby expressly authorized to provide for the issue of the shares of the Preferred Stock in one or more series, and to fix the number of shares and to determine or alter for each such series such voting powers, full or limited, or no voting powers, and such designation, preferences, and relative, participating, optional, or other rights and such qualifications, limitations, or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such shares and as may be permitted by the DGCL. Without limiting the generality of the foregoing, the resolution or resolutions providing for the establishment of any series of Preferred Stock may, to the extent permitted by law, provide that such series shall be superior to, rank

equally with, or be junior to the Preferred Stock of any other series. The powers, preferences, and relative, participating, optional, and other special rights of each series of Preferred Stock, and the qualifications, limitations, or restrictions thereof, if any, may be different from those of any and all other series at any time outstanding. Except as otherwise expressly provided in the resolution or resolutions providing for the establishment of any series of Preferred Stock, no vote of the holders of shares of Preferred Stock or Common Stock shall be a prerequisite to the issuance of any shares of any series of the Preferred Stock so authorized in accordance with this Amended and Restated Certificate of Incorporation. Subject to the rights of the holders of any series of Preferred Stock, the Board is also expressly authorized to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not below the number of shares of such series then outstanding. In case the number of shares of any series shall be decreased in accordance with the foregoing sentence, the shares constituting such decrease shall resume the status that they had prior to the adoption of the resolution originally fixing the number of shares of such series.

C. Each outstanding share of Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote; *provided, however*, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon by law or pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designation filed with respect to any series of Preferred Stock).

## ARTICLE V

For the management of the business and for the conduct of the affairs of the Corporation, and in further definition, limitation, and regulation of the powers of the Corporation, of its directors, and of its stockholders or any class thereof, as the case may be, it is further provided that:

**A. Management of Business.** The management of the business and the conduct of the affairs of the Corporation shall be vested in its Board. Except as otherwise expressly delegated by resolution of the Board, the Board shall have the exclusive power and authority to appoint and remove officers of the Corporation.

### **B. Board of Directors.**

1. **Number.** The number of directors that shall constitute the Board shall be fixed exclusively by one or more resolutions adopted from time to time by the Board.

2. **Term.** Other than any directors elected by the separate vote of the holders of one or more series of Preferred Stock, if any, who are entitled to elect directors, following the closing of the Corporation's initial public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended (the "**Securities Act**") covering the offer and sale of securities to the public (the "**Initial Public Offering**"), the directors shall be divided into three classes designated as Class I, Class II, and Class III, respectively. The Board is authorized to assign members of the Board already in office to such classes at the time the classification becomes effective. At the first annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class I directors shall expire and Class I directors shall be elected for a full term of three (3) years. At the second annual meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class II directors shall expire and Class II directors shall be elected for a full term of three (3) years. At the third annual

meeting of stockholders following the closing of the Initial Public Offering, the term of office of the Class III directors shall expire and Class III directors shall be elected for a full term of three (3) years. Subject to the special rights of the holders of one or more series of Preferred Stock, if any, to elect directors, at each succeeding annual meeting of stockholders, directors shall be elected for a full term of three (3) years to succeed the directors of the class whose terms expire at such annual meeting. Notwithstanding the foregoing provisions of this section, each director shall serve until his or her successor is duly elected and qualified or until his or her earlier death, resignation, or removal. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director.

3. **Removal.** Subject to the special rights of the holders of one or more series of Preferred Stock, if any, to elect directors, following the closing of the Initial Public Offering, the Board or any individual director may be removed from office at any time, but only for cause and only by the affirmative vote of the holders of sixty-six and two-thirds percent (66-2/3%) of the voting power of all the then outstanding shares of voting stock of the Corporation with the power to vote at an election of directors.

4. **Vacancies.** Subject to the special rights of the holders of one or more series of Preferred Stock, if any, to elect directors, any vacancies on the Board resulting from death, resignation, disqualification, removal, or other causes, and any newly created directorships resulting from any increase in the number of directors, shall, unless the Board determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders, except as otherwise provided by law, be filled only by the affirmative vote of a majority of the directors then in office, even if less than a quorum of the Board, or by a sole remaining director, and not by the stockholders. Any director appointed in accordance with the preceding sentence shall hold office for a term that shall coincide with the remaining term of the class to which the director shall have been appointed and until such director's successor shall have been elected and qualified or until his or her earlier death, resignation, or removal.

C. **Bylaw Amendments.** The Board is expressly empowered to adopt, amend, or repeal the Bylaws of the Corporation. Any adoption, amendment, or repeal of the Bylaws of the Corporation by the Board shall require the approval of a majority of the directors then in office. The stockholders shall also have power to adopt, amend, or repeal the Bylaws of the Corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by this Amended and Restated Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

D. **Written Ballots.** The directors of the Corporation need not be elected by written ballot unless the Bylaws so provide.

E. **No Action by Stockholders by Written Consent.** Subject to the special rights of the holders of one or more series of Preferred Stock, if any, to take action by written consent, no action shall be taken by the stockholders of the Corporation except at an annual or special meeting of stockholders and no action shall be taken by the stockholders by written consent.

F. **Special Meetings of Stockholders.** Special meetings of the stockholders of the Corporation may be called, for any purpose or purposes, only by the Board or an officer of the Corporation authorized by the Board or designated in the Bylaws of the Corporation to call such a special meeting, but such special meetings may not be called by stockholders or any other person or persons.



**G. Advance Notice.** Advance notice of stockholder nominations for the election of directors and of other business to be brought by stockholders before any meeting of the stockholders of the Corporation shall be given in the manner provided in the Bylaws of the Corporation.

#### ARTICLE VI

A. To the fullest extent permitted by the DGCL, as the same exists or as may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL or any other law of the State of Delaware is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL or such other law of the State of Delaware as so amended, automatically and without further action, upon the date of such amendment.

B. To the fullest extent permitted by applicable law, the Corporation is authorized to provide indemnification of (and advancement of expenses to) directors, officers, and agents of the Corporation (and any other persons to which the DGCL permits the Corporation to provide indemnification) through Bylaw provision, agreement, vote of stockholders or disinterested directors, or otherwise, in excess of the indemnification and advancement otherwise permitted by Section 145 of the DGCL.

C. Neither any amendment nor repeal of this Article VI, nor the adoption by amendment of this Amended and Restated Certificate of Incorporation of any provision inconsistent with this Article VI, shall eliminate or reduce the effect of this Article VI in respect of any matter occurring, or any action or proceeding accruing or arising (or that, but for this Article VI, would accrue or arise) prior to such amendment or repeal or adoption of an inconsistent provision.

#### ARTICLE VII

A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if and only if the Court of Chancery of the State of Delaware lacks jurisdiction, any state court located within the State of Delaware or, if and only if all such state courts lack jurisdiction, the federal district court for the District of Delaware) and any appellate court therefrom shall be the sole and exclusive forum for the following claims or causes of action: (i) any derivative claim or cause of action brought on behalf of the Corporation; (ii) any claim or cause of action for breach of a fiduciary duty owed by any current or former director, officer, employee, agent, or stockholder of the Corporation, to the Corporation or the Corporation's stockholders, including without limitation a claim alleging the aiding and abetting of such a breach of fiduciary duty; (iii) any claim or cause of action against the Corporation or any current or former director, officer, employee, agent, or stockholder of the Corporation arising out of or pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation, or the Bylaws of the Corporation (as each may be amended from time to time); (iv) any claim or cause of action seeking to interpret, apply, enforce, or determine the validity of this Amended and Restated Certificate of Incorporation or the Bylaws of the Corporation (as each may be amended from time to time, including any right, obligation, or remedy thereunder); (v) any claim or cause of action as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; and (vi) any action asserting a claim related to or involving the Corporation that is governed by the internal-affairs doctrine, in all cases to the fullest extent permitted by law. This Section A of Article VII shall not apply to claims or causes of action brought to enforce a duty or liability created by the Securities Act of 1933, as amended (the "1933 Act"), or the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction. If any action the subject matter of which is within the scope of Section A of Article VII is filed in a court other than the courts in the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the state and federal courts in the State of Delaware in connection with any action brought

in any such court to enforce the provisions of Section A of Article VII and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

B. Unless the Corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the 1933 Act.

C. Any person or entity holding, owning, or otherwise acquiring any interest in any security of the Corporation shall be deemed to have notice of and consented to the provisions of this Amended and Restated Certificate of Incorporation.

D. If any provision or provisions of this Article VII shall be held to be invalid, illegal, or unenforceable as applied to any circumstance for any reason whatsoever, (a) the validity, legality, and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article VII (including, without limitation, each portion of any paragraph of this Article VII containing any such provision held to be invalid, illegal, or unenforceable that is not itself held to be invalid, illegal, or unenforceable) shall not in any way be affected or impaired thereby and (b) the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

#### ARTICLE VIII

A. The Corporation reserves the right to amend, alter, change, or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, except as provided in paragraph B. of this Article VIII, and all rights conferred upon the stockholders herein are granted subject to this reservation.

B. Notwithstanding any other provisions of this Amended and Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the Corporation required by law or by this Amended and Restated Certificate of Incorporation or any certificate of designation filed with respect to a series of Preferred Stock that may be designated from time to time, the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, amend, or repeal, by merger, consolidation, or otherwise, Articles V, VI, VII and VIII.

**AMENDED AND RESTATED  
BYLAWS  
OF  
CARIBOU BIOSCIENCES, INC.  
(A DELAWARE CORPORATION)**

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**AMENDED AND RESTATED BYLAWS**

**OF**

**CARIBOU BIOSCIENCES, INC.**

**(A DELAWARE CORPORATION)**

**ARTICLE I  
OFFICES**

**1.1 Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

**1.2 Other Offices.** The corporation may also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors of the corporation (the "Board of Directors"), and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II  
CORPORATE SEAL**

**2.1 Corporate Seal.** The Board of Directors may adopt a corporate seal. If adopted, the corporate seal shall consist of a die bearing the name of the corporation and the inscription, "Corporate Seal-Delaware." Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

**ARTICLE III  
STOCKHOLDERS' MEETINGS**

**3.1 Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as may be determined from time to time by the Board of Directors. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law ("DGCL").

**3.2 Annual Meetings.**

**(a)** The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may properly come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors. Nominations of persons for election to the Board of Directors of the corporation and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders: (i) pursuant to the corporation's notice of meeting of stockholders; (ii) brought specifically by or at the direction of the Board of Directors; or (iii) by

any stockholder of the corporation who was a stockholder of record both at the time of giving the stockholder's notice provided for in Section 3.2(b) below and at the time of the meeting, who is entitled to vote at the meeting and is present in person at the meeting, and who complied with the notice procedures set forth in this Section 3.2. For the avoidance of doubt, clause (iii) above shall be the exclusive means for a stockholder to make nominations and submit other business (other than matters properly included in the corporation's notice of meeting of stockholders and proxy statement under Rule 14a-8 (or any successor rule) under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "1934 Act")) before an annual meeting of stockholders, and such stockholder must comply with the notice and other procedures set forth in Section 3.2(b) of this Bylaw to bring such nominations or business properly before an annual meeting of stockholders. For purposes of this Section 3.2, "present in person" shall mean that the stockholder proposing nominations of persons for election to the Board of Directors or business to be brought before the annual meeting of the corporation, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, appear at such annual meeting, and a "qualified representative" of such proposing stockholder shall be, if such proposing stockholder is (x) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership, or who controls the general or limited partnership; (y) a corporation or a limited liability company, any officer or Person who functions as an officer of the corporation or limited liability company, or any officer, director, general partner, or Person who functions as an officer, director, or general partner of any entity ultimately in control of the corporation or limited liability company; or (z) a trust, any trustee of such trust.

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as is a proper matter for stockholder action under Delaware law and as shall have been properly brought before the meeting.

**(i)** For nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.2(a) of these Bylaws, the stockholder must deliver written notice in proper form to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 3.2(b)(iii) and must update and supplement such written notice on a timely basis as set forth in Section 3.2(c). To be in proper form for purposes of this Section 3.2(b)(i), such stockholder's notice shall set forth: (A) as to each nominee such stockholder proposes to nominate at the meeting: (1) the name, age, business address and residence address of such nominee, (2) the principal occupation or employment of such nominee, (3) the class and number of shares of each class of capital stock of the corporation which are owned of record and/or beneficially by such nominee and any derivative positions held or beneficially held by the nominee, (4) the date or dates on which such shares were acquired and the investment intent of such acquisition, (5) whether and the extent to which any hedging or other transaction or series of transactions has been entered into by or on behalf of the nominee with respect to any securities of the corporation, and a description of any other agreement, arrangement or understanding (including any short position or any borrowing or lending of shares), the effect or intent of which is to mitigate loss to, or to manage the risk or benefit of share price changes for, or to increase or decrease the voting power of the nominee, (6) a description of all arrangements or understandings between or among the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder or concerning the nominee's potential service on the Board of Directors, (7) a written statement executed by



the nominee acknowledging that as a director of the corporation, the nominee will owe fiduciary duties under Delaware law with respect to the corporation and its stockholders, (8) a written statement executed by the nominee acknowledging that such person intends to serve as a director for the full term for which such person is standing for election, (9) a written statement executed by the nominee representing that the nominee has read and agrees to adhere to the corporation's policies and guidelines applicable to directors, that the nominee is not and will not become a party to any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the corporation or any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the corporation, with such person's fiduciary duties under applicable law, and that the nominee is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the corporation with respect to any direct or indirect compensation, reimbursement, or indemnification that has not been disclosed to the corporation in connection with such person's nomination for director or service as a director, and (10) such other information concerning such nominee as would be required to be disclosed in a proxy statement soliciting proxies for the election of such nominee as a director in an election contest (even if an election contest is not involved), or that is otherwise required to be disclosed pursuant to Section 14 of the 1934 Act and the rules and regulations promulgated thereunder (including such person's written consent to being named as a nominee and to serving as a director if elected); and (B) the information required by Section 3.2(b)(iv). The corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as an independent director of the corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such proposed nominee.

**(ii)** Other than proposals sought to be included in the corporation's proxy materials pursuant to Rule 14a-8 (or any successor rule) under the 1934 Act, for business other than nominations for the election to the Board of Directors to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 3.2(a), the stockholder must deliver written notice in proper form to the Secretary at the principal executive offices of the corporation on a timely basis as set forth in Section 3.2(b)(iii), and must update and supplement such written notice on a timely basis as set forth in Section 3.2(c). To be in proper form for purposes of this Section 3.2(b)(ii), such stockholder's notice shall set forth: (A) as to each matter such stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting, the text, if any, of any resolutions or Bylaw amendment proposed for adoption, and any material interest of any Proponent (as defined below) (including any anticipated benefit of such business to any Proponent other than solely as a result of its ownership of the corporation's capital stock, that is material to any Proponent individually, or to the Proponents in the aggregate) in such business of any Proponent; and (B) the information required by Section 3.2(b)(iv).

**(iii)** To be timely, the written notice in proper form required by Section 3.2(b)(i) or 3.2(b)(ii) must be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the ninetieth (90th) day nor earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that, subject to the last sentence of this Section 3.2(b)(iii), in the event that the date of

the annual meeting is advanced more than thirty (30) days prior to or delayed by more than sixty (60) days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so received not earlier than the close of business on the one hundred twentieth (120th) day prior to the scheduled date of such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made. Notwithstanding anything to the contrary provided herein, for the first annual meeting following the initial public offering of common stock of the corporation, a stockholder's written notice shall be timely if received by the Secretary at the principal executive offices of the corporation not later than the close of business on the later of the ninetieth (90th) day prior to the scheduled date of such annual meeting or the tenth (10th) day following the day on which public announcement of the date of such annual meeting is first made or sent by the corporation. In no event shall an adjournment or a postponement of an annual meeting for which notice has been given, or the public announcement thereof has been made, commence a new time period for the giving of a stockholder's written notice as described above.

(iv) The written notice required by Section 3.2(b)(i) or 3.2(b)(ii) shall also set forth, as of the date of the notice and as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (each, a "Proponent" and collectively, the "Proponents"): (A) the name and address of each Proponent, as they appear on the corporation's books; (B) the class, series and number of shares of the corporation that are owned beneficially and/or of record by each Proponent or as to which such Proponent or any of its affiliates or associates has the right to acquire beneficial ownership of at any time in the future; (C) any proxy (other than a revocable proxy given in response to a public proxy solicitation made pursuant to, and in accordance with, the 1934 Act), agreement, arrangement, understanding or relationship pursuant to which such Proponent has or shares a right to, directly or indirectly, vote any shares of any class or series of capital stock of the corporation; (D) any rights to dividends or other distributions on the shares of any class or series of capital stock of the corporation, directly or indirectly, owned beneficially by such Proponent that are separated or separable from the underlying shares of the corporation; (E) any performance-related fees (other than an asset based fee) that such Proponent, directly or indirectly, is entitled to based on any increase or decrease in the value of shares of any class or series of capital stock of the corporation or any Derivative Transaction, (E) a description of the material terms of any agreement, arrangement or understanding (whether or not in writing) with respect to such nomination or proposal between or among any Proponent and any of its affiliates or associates, and any others (including their names) acting in concert, or otherwise under the agreement, arrangement or understanding, with any of the foregoing; (F) a description of the material terms of all agreements, arrangements or understandings (whether or not in writing) entered into by any Proponent or any of its affiliates or associates with any other person for the purpose of acquiring, holding, disposing or voting of any shares of any class or series of capital stock of the corporation; (G) a representation that the Proponents are holders of record or beneficial owners, as the case may be, of shares of the corporation entitled to vote at the meeting and intend to be present in person at the meeting to nominate the person or persons specified in the notice (with respect to a notice under Section 3.2(b)(i)) or to propose the business that is specified in the notice (with respect to a notice under Section 3.2(b)(ii)); (H) a representation as to whether the Proponents intend to deliver a proxy statement and form of proxy to holders of a sufficient number of holders of the corporation's voting shares to elect such nominee or nominees (with respect to a notice under Section 3.2(b)(i)) or to carry such proposal (with respect to a notice under Section 3.2(b)(ii)); (I) to the extent known by any Proponent, the name and address of any other stockholder (including beneficial

owners) supporting the proposal on the date of such stockholder's notice and to the extent known the class and number of all shares of the corporation's capital stock owned beneficially or of record by such other stockholder(s) or other beneficial owner(s); (J) any material pending or threatened legal proceeding in which such Proponent or any of its affiliates or associates is a party or a material participant involving the corporation or any of its directors or officers, or any affiliate of the corporation; and (K) a description of all Derivative Transactions (as defined below) in which each Proponent has an outstanding interest and by each Proponent during the previous twelve (12) month period, including the date of the transactions and the class, series and number of securities involved in, and the material economic terms of (including without limitation the full notional amount of any securities that directly or indirectly underlie any Derivative Transaction,), such Derivative Transactions.

For purposes of Sections 3.2 and 3.3, a "Derivative Transaction" means any agreement, arrangement, interest or understanding (or series of agreements, arrangements, interests or understandings), entered into by, or on behalf or for the benefit of, any Proponent or any of its affiliates or associates, whether record or beneficial:

- (w) the value of which is derived in whole or in part from the value of any class or series of shares or other securities of the corporation,
- (x) which otherwise provides any direct or indirect opportunity to gain or share in any gain or to avoid a loss derived from a change in the value of securities of the corporation,
- (y) the effect or intent of which is to mitigate loss, reduce the economic risk of, manage risk or benefit of security value or price changes, or
- (z) which provides the right to vote or increase or decrease the voting power of, such Proponent, or any of its affiliates or associates, with respect to any securities of the corporation,

which agreement, arrangement, interest or understanding may include, without limitation, any option, warrant, debt position, note, bond, convertible security, swap, stock appreciation right, short position, profit interest, derivative, hedge, right to dividends, voting agreement, performance-related fee or arrangement to borrow or lend shares (whether or not subject to payment, settlement, exercise or conversion in any such class or series), and any proportionate interest of such Proponent in the securities of the corporation held by any general or limited partnership, or any limited liability company, of which such Proponent is, directly or indirectly, a general partner or managing member.

(c) A stockholder providing written notice required by Section 3.2(b)(i) or (ii) shall update and supplement such notice in writing, if necessary, so that the information provided or required to be provided in such notice is true and correct in all material respects as of (i) the record date for the meeting and (ii) the date that is five (5) business days prior to the meeting and, in the event of any adjournment or postponement thereof, five (5) business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section 3.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than five (5) business days after

the record date for the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section 3.2(c), such update and supplement shall be received by the Secretary at the principal executive offices of the corporation not later than three (3) business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, three (3) business days prior to such adjourned or postponed meeting.

**(d)** Notwithstanding anything in Section 3.2(b)(iii) to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public announcement of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the corporation at least ten (10) days before the last day a stockholder may deliver a notice of nomination in accordance with Section 3.2(b)(iii), a stockholder's notice required by this Section 3.2 and which complies with the requirements in Section 3.2(b)(i), other than the timing requirements in Section 3.2(b)(iii), shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the corporation. For purposes of this section, an "Expiring Class" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

**(e)** A person shall not be eligible for election or re-election as a director unless the person is nominated in accordance with either clause (ii) or (iii) of Section 3.2(a). The Board of Directors of the corporation or a designated committee thereof shall have the power to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the provisions set forth in these Bylaws. If neither the Board of Directors nor such designated committee makes a determination as to whether any stockholder proposal or nomination was made in accordance with the provisions of this Bylaw, then, except as otherwise required by law, the presiding officer of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these Bylaws and, if any proposed nomination or business is not in compliance with these Bylaws, or the Proponent does not act in accordance with the representations in Sections 3.2(b)(iv)(G) and 3.2(b)(iv)(H), to declare that such proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded, notwithstanding that proxies in respect of such nominations or such business may have been solicited or received.

**(f)** Notwithstanding the foregoing provisions of this Section 3.2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, a stockholder must also comply with all applicable requirements of the 1934 Act and the rules and regulations thereunder. Nothing in these Bylaws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the 1934 Act; *provided, however*, that any references in these Bylaws to the 1934 Act or the rules and regulations thereunder are not intended to and shall not limit the requirements applicable to proposals and/or nominations to be considered pursuant to Section 3.2(a)(iii) of these Bylaws.

**(g)** Except as otherwise required by law, nothing in this Section 3.2 shall obligate the corporation or the Board of Directors to include in any proxy statement or other stockholder communication distributed on behalf of the corporation or the Board of Directors information with respect to any nominee for director or any other matter of business submitted by a stockholder.

(h) Notwithstanding the foregoing provisions of this Section 3.2, if the nominating or proposing stockholder does not appear at the annual meeting to present in person a nomination or any business, such nomination or business shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the corporation

(i) For purposes of Sections 3.2 and 3.3,

(i) “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, or comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the 1934 Act; and

(ii) “affiliates” and “associates” shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended (the “1933 Act”).

### **3.3 Special Meetings.**

(a) Except as otherwise required by statute and subject to the rights, if any, of the holders of any series of Preferred Stock, special meetings of the stockholders of the corporation may be called, for any purpose as is a proper matter for stockholder action under Delaware law, by (i) the Chair of the Board of Directors, (ii) the Chief Executive Officer, or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the directors then in office.

(b) The Board of Directors shall determine the time and place, if any, of such special meeting. Upon determination of the time and place, if any, of the meeting, the Secretary shall cause a notice of meeting to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4. No business may be transacted at such special meeting otherwise than specified in the notice of meeting.

(c) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the corporation’s notice of meeting. Nominations of persons for election to the Board of Directors of the corporation and stockholder proposals of other business shall not be brought before a special meeting of stockholders to be considered by the stockholders unless, with respect to nominations, the Board of Directors has determined that any vacancy or newly created directorship be filled by the stockholders at such special meeting or, with respect to nominations and other business, the Board of Directors has determined that such special meeting be held in lieu of an annual meeting of stockholders in accordance with Section 3.2 of these Bylaws, in which case such special meeting shall be deemed an annual meeting for purposes of these Bylaws and the provisions of Section 3.2 of these Bylaws shall govern such special meeting.

**3.4 Notice of Meetings.** Except as otherwise provided by law, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour, in the case of special meetings, the purpose or purposes of the meeting, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at any such meeting. If mailed, notice is given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the corporation. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his or her attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given. The Board of Directors may postpone and reschedule any previously scheduled annual meeting or special meeting of stockholders and any record date with respect thereto, regardless of whether any notice or public disclosure with respect to any such meeting has been sent or made pursuant to Section 3.2 of these Bylaws or otherwise. In no event shall the public announcement of an adjournment, postponement or rescheduling of any previously scheduled meeting of stockholders commence a new time period for the giving of a stockholder's notice under Section 3.2 of these Bylaws.

**3.5 Quorum; Action at Meeting.** At all meetings of stockholders, except where otherwise provided by statute or by the Amended and Restated Certificate of Incorporation of the corporation (as the same may hereafter be amended and/or restated, the "Certificate of Incorporation"), or by these Bylaws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the presiding officer of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute or by applicable stock exchange rules, or by the Certificate of Incorporation or these Bylaws, in all matters other than the election of directors, the affirmative vote of the majority of the votes properly cast for and against such matter shall be the act of the stockholders. Except as otherwise provided by statute, the Certificate of Incorporation or these Bylaws, directors shall be elected by a plurality of the votes properly cast. Where a separate vote by a class or classes or series is required, except where otherwise provided by the statute or by the Certificate of Incorporation or these Bylaws, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter. Except where otherwise provided by statute or by the Certificate of Incorporation or these Bylaws, the affirmative vote of the majority (plurality, in the case of the election of directors) of the votes properly cast for and against such matter shall be the act of such class or classes or series.

**3.6 Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the presiding officer of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy at the meeting. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken; provided that if the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting.

**3.7 Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 3.9 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period.

**3.8 Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, to the fullest extent permitted by law, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his or her act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) shall be a majority or even-split in interest.

**3.9 List of Stockholders.** The Secretary (or the corporation's transfer agent or other person authorized by these Bylaws or by law) shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any stockholder who is present at the meeting during the whole time of the meeting as provided by law.

**3.10 Action Without Meeting.** Subject to the rights, if any, of holders of Preferred Stock to take action by written consent, no action shall be taken by the stockholders except at an annual or special meeting of stockholders called in accordance with these Bylaws, and no action shall be taken by the stockholders by written consent or by electronic transmission.

### **3.11 Organization.**

(a) The Board of Directors shall designate a representative to preside over all annual meetings or special meetings of stockholders, provided that if the Board of Directors does not so designate such a presiding officer, then the Chair of the Board, if one is elected, shall preside over such meetings. If the Board of Directors does not so designate such a presiding officer and there is no Chair or the Chair is absent, the Chief Executive Officer of the corporation, or, if the Chief Executive Officer is absent, then the President (if the Chief Executive Officer and President positions are held by different persons) of the corporation, shall preside over such meetings. The Secretary, or, in his or her absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

(b) The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the presiding officer of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding officer, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the presiding officer shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot.

## **ARTICLE IV DIRECTORS**

**4.1 Number and Term of Office.** The number of directors that shall constitute the Board shall be fixed exclusively by one or more resolutions adopted from time to time by the Board of Directors. The directors shall hold office in the manner provided in the Certificate of Incorporation. Directors need not be stockholders unless so required by the Certificate of Incorporation.

**4.2 Powers.** The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**4.3 Classes of Directors.** The directors shall be divided into three classes as provided in the Certificate of Incorporation.



**4.4 Vacancies.** Vacancies in the Board of Directors shall be filled in the manner provided in the Certificate of Incorporation.

**4.5 Resignation.** Any director may resign at any time by delivering his or her notice in writing or by electronic transmission to the Chair of the Board of Directors, if one is elected, the Chief Executive Officer, the President, or Secretary, such resignation to specify whether it will be effective at a particular time. If no such specification is made, it shall be deemed effective at the time of delivery. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his or her successor shall have been duly elected and qualified.

**4.6 Removal.** Directors may be removed from office only in the manner provided in the Certificate of Incorporation.

**4.7 Meetings.**

(a) **Regular Meetings.** Regular meetings of the Board of Directors may be held at any time or date and at any place within or without the State of Delaware which has been designated by the Board of Directors and publicized among all directors, either orally or in writing, by telephone, including a voice-messaging system or other system designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means. No further notice shall be required for regular meetings of the Board of Directors.

(b) **Special Meetings.** Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chair of the Board, the Chief Executive Officer or a majority of the directors. The person calling any such special meeting of the Board of Directors may fix the time and place thereof.

(c) **Meetings by Electronic Communications Equipment.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) **Notice of Special Meetings.** Notice of the time and place of all special meetings of the Board of Directors shall be orally or in writing, by telephone, including a voice messaging system or other system or technology designed to record and communicate messages, facsimile, telegraph or telex, or by electronic mail or other electronic means, during normal business hours, at least twenty-four (24) hours before the date and time of the meeting. If notice is sent by United States mail, it shall be sent by first class mail, charges prepaid, at least three (3) days before the date of the meeting. Notice of any meeting may be waived in writing, or by electronic transmission, at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends the meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not

lawfully called or convened. Except as otherwise required by law, the Certificate of Incorporation or by these Bylaws, neither the business to be transacted at, nor the purpose of, any meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

(e) **Waiver of Notice.** The transaction of all business at any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though it had been transacted at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present who did not receive notice shall sign a written waiver of notice or shall waive notice by electronic transmission. All such waivers shall be filed with the corporate records or made a part of the minutes of the meeting.

#### **4.8 Quorum and Voting.**

(a) A majority of the total number of directors then in office shall constitute a quorum for the transaction of business; provided that such number shall not be less than one third of the total authorized directors. Notwithstanding the foregoing, at any meeting of the Board of Directors, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by the affirmative vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation or these Bylaws.

**4.9 Action Without Meeting.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**4.10 Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

#### **4.11 Committees.**

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one (1) or more members of the Board of Directors. The Executive Committee, to the extent

permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adopting, amending or repealing any Bylaw of the corporation.

(b) **Other Committees.** The Board of Directors may, from time to time, appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock and the provisions of subsections (a) or (b) of this Section 4.11, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The membership of a committee member shall terminate on the date of his or her death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 4.11 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any Director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing or by electronic transmission at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the members then serving on any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**4.12 Organization.** At every meeting of the directors, the Chair of the Board of Directors, or, if a Chair has not been appointed or is absent, the Chief Executive Officer (if a director), or, if a Chief Executive Officer is absent, the President (if a director, and if the Chief Executive Officer and President positions are held by different persons), or if the President is absent, a chair of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his or her absence, any Assistant Secretary or other officer or director or other person directed to do so by the Chair of the Board or the President, shall act as secretary of the meeting.

## **ARTICLE V OFFICERS**

**5.1 Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chair of the Board of Directors (provided that notwithstanding anything to the contrary contained in these Bylaws, the Chair of the Board of Directors shall not be deemed an officer of the corporation unless so designated by the Board of Directors), the Chief Executive Officer, the President, the Secretary, the Chief Financial Officer, and the Treasurer. The Board of Directors may also appoint one or more Assistant Secretaries and Assistant Treasurers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

### **5.2 Tenure and Duties of Officers.**

(a) **General.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors.

(b) **Duties of Chief Executive Officer.** The Chief Executive Officer shall preside at all meetings of the stockholders (subject to Section 3.11) and at all meetings of the Board of Directors, unless the Chair of the Board of Directors has been appointed and is present. Unless an officer has been appointed Chief Executive Officer of the corporation, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and officers of the corporation. To the extent that a Chief Executive Officer has been appointed and no President has been appointed, all references in these Bylaws to the President shall be deemed references to the Chief Executive Officer. The Chief Executive Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(c) **Duties of President.** The President shall preside at all meetings of the stockholders (subject to Section 3.11) and at all meeting of the Board of Directors, unless the Chair of the Board of Directors or the Chief Executive Officer has been appointed and is present. Unless another officer has been appointed

Chief Executive Officer of the corporation, the President shall be the Chief Executive Officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction, and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time.

(d) **Duties of Other Officers.** The Board of Directors may appoint, or empower the Chief Executive Officer or, in the absence of a Chief Executive Officer, the President, to appoint, such other officers as the business of the corporation may require. Each of such officers shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board of Directors may from time to time determine.

(e) **Duties of Secretary.** The Secretary shall attend all meetings of the stockholders and of the Board of Directors and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice in conformity with these Bylaws of all meetings of the stockholders and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform all other duties provided for in these Bylaws and other duties commonly incident to the office and shall also perform such other duties and have such other powers, as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary or other officer to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) **Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. To the extent that a Chief Financial Officer has been appointed and no Treasurer has been appointed, all references in these Bylaws to the Treasurer shall be deemed references to the Chief Financial Officer. The President may direct the Treasurer, if any, or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(g) **Duties of Treasurer.** Unless another officer has been appointed Chief Financial Officer of the corporation, the Treasurer shall be the Chief Financial Officer of the corporation and shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President, and, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

**5.3 Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**5.4 Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**5.5 Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or by the Chief Executive Officer or by other superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**6.1 Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do.

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**6.2 Voting of Securities Owned by the Corporation.** All stock and other securities of other entities owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chair of the Board of Directors, the Chief Executive Officer, the President, or any other officer so authorized by the Board of Directors.

**ARTICLE VII  
SHARES OF STOCK**

**7.1 Form and Execution of Certificates.** The shares of the corporation shall be represented by certificates or shall be uncertificated. Certificates for the shares of stock, if any, of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock represented by certificate in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by any two authorized officers of the corporation, certifying the number of shares owned by him or her in the corporation. The corporate seal and any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if her or she were such officer, transfer agent, or registrar at the date of issue. **Notwithstanding anything to the contrary provided in these Bylaws, the Board of Directors of the corporation may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares (except that the foregoing shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation), and by the approval and adoption of these Bylaws the Board of Directors has determined that all classes or series of the corporation's stock may be uncertificated, whether upon original issuance, re-issuance, or subsequent transfer.**

**7.2 Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

**7.3 Transfers.**

**(a)** Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, and, in the case of stock represented by certificate, upon the surrender of a properly endorsed certificate or certificates for a like number of shares.

**(b)** The corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

#### 7.4 Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, subject to applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

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

### ARTICLE VIII OTHER SECURITIES OF THE CORPORATION

**8.1 Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chair of the Board of Directors, the President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however*, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the



Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## **ARTICLE IX DIVIDENDS**

**9.1 Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation and applicable law.

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

## **ARTICLE X FISCAL YEAR**

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

## **ARTICLE XI INDEMNIFICATION**

**11.1 Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.**

(a) **Directors and Executive Officers.** The corporation shall indemnify its directors and executive officers (for the purposes of this Article XI, "executive officers" shall have the meaning defined in Rule 3b-7 promulgated under the 1934 Act) to the extent not prohibited by the DGCL or any other applicable law; *provided, however*, that the corporation may modify the extent of such indemnification by individual contracts with its directors and executive officers; and, *provided, further*, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person unless (i) such indemnification is expressly required to be made by

law, (ii) the proceeding was authorized by the Board of Directors of the corporation, (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the DGCL or any other applicable law or (iv) such indemnification is required to be made under subsection (d).

(b) **Other Officers, Employees and Other Agents.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the DGCL or any other applicable law. The Board of Directors shall have the power to delegate the determination of whether indemnification shall be given to any such person to such officers or other persons as the Board of Directors shall determine.

(c) **Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or executive officer, of the corporation, or is or was serving at the request of the corporation as a director or executive officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding; *provided, however*, an advancement of expenses incurred by a director or executive officer in his or her capacity as a director or executive officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this section or otherwise. The corporation may, at the discretion of the Board of Directors, advance to any of its other officers, employees and other agents on such basis as the Board of Directors may authorize.

(d) **Right of Indemnitee to Bring Suit.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Bylaw shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this section to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. To the extent permitted by law, the claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable

standard of conduct. The burden of proving that a director or executive officer is not entitled to an advancement of expenses shall be on the corporation. In any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that the director or executive officer or any other officer, employee or other agent has not met any applicable standard for indemnification set forth in the DGCL.

(e) **Non-Exclusivity of Rights.** The rights conferred on any person by this Bylaw shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL, or by any other applicable law.

(f) **Survival of Rights.** The rights conferred on any person by this Bylaw shall continue as to a person who has ceased to be a director or executive officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

(g) **Insurance.** To the fullest extent permitted by the DGCL or any other applicable law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this section.

(h) **Amendments.** Any repeal or modification of this section, or the adoption of any provision of the Certificate of Incorporation inconsistent with this section, shall only be prospective and shall not affect the rights under this Bylaw in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

(i) **Other Indemnification.** The corporation's obligation, if any, to indemnify or provide advancement of expenses to any person under this section as a result of such person serving, at the request of the corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount such person may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or enterprise (the "Primary Indemnitor"). Any indemnification or advancement of expenses under this section owed by the corporation as a result of a person serving, at the request of the corporation, as a director, partner, trustee, officer, employee or agent of another corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall only be in excess of, and shall be secondary to, the indemnification or advancement of expenses available from the applicable Primary Indemnitor(s) and any applicable insurance policies.

(j) **Saving Clause.** If this Bylaw or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this section that shall not have been invalidated, or by any other applicable law. If this section shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and executive officer to the full extent under any other applicable law.

(k) **Certain Definitions.** For the purposes of this Bylaw, the following definitions shall apply:

(i) The term “proceeding” shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

(ii) The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

(iii) The term the “corporation” shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this section with respect to the resulting or surviving corporation as he would have with respect to such constituent corporation if its separate existence had continued.

(iv) References to a “director,” “executive officer,” “officer,” “employee,” or “agent” of the corporation shall include, without limitation, situations where such person is serving at the request of the corporation as, respectively, a director, executive officer, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

(v) References to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the corporation” shall include any service as a director, officer, employee or agent of the corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this section.

**ARTICLE XII**  
**NOTICES**

**12.1 Notices.**

(a) **Notice to Stockholders.** Written notice to stockholders of stockholder meetings shall be given as provided in Section 3.4 herein. Without limiting the manner by which notice may otherwise be given effectively to stockholders under any agreement or contract with such stockholder, and except as otherwise required by law, written notice to stockholders for purposes other than stockholder meetings may be sent by United States mail or nationally recognized overnight courier, or by facsimile, telegraph or telex or by electronic mail or other electronic means. Without limiting the manner by which notice may otherwise be given to stockholders, any notice to stockholders may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

(b) **Notice to Directors.** Any notice required to be given to any director may be given by the method stated in subsection (a), as otherwise provided in these Bylaws, or by overnight delivery service, facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

(c) **Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

(d) **Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

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

(f) **Notice to Stockholders Sharing an Address.** Except as otherwise prohibited under DGCL, any notice given under the provisions of DGCL, the Certificate of Incorporation or the Bylaws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. Such consent shall have been deemed to have been given if such stockholder fails to object in writing to the corporation within sixty (60) days of having been given notice by the corporation of its intention to send the single notice. Any consent shall be revocable by the stockholder by written notice to the corporation.

### **ARTICLE XIII AMENDMENTS**

**13.1 Amendments.** Subject to the limitations set forth in Section 11.1(h) of these Bylaws or the provisions of the Certificate of Incorporation, the Board of Directors is expressly empowered to adopt, amend or repeal the Bylaws of the corporation. Any adoption, amendment or repeal of the Bylaws of the corporation by the Board of Directors shall require the approval of a majority of the directors then in office. The stockholders also shall have power to adopt, amend or repeal the Bylaws of the corporation; *provided, however,* that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by the Certificate of Incorporation, such action by stockholders shall require the affirmative vote of the holders of at least sixty-six and two-thirds percent (66 2/3%) of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class.

### **ARTICLE XIV LOANS TO OFFICERS OR EMPLOYEES**

**14.1 Loans to Officers or Employees.** Except as otherwise prohibited by applicable law, including the Sarbanes-Oxley Act of 2002, the corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a Director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock of the corporation. Nothing in these Bylaws shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under any statute.

Effective as of July 27, 2021.

## OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement (“Agreement”) is amended and restated as of July 27, 2021 (“Effective Date”), and is by and between Caribou Biosciences, Inc., a Delaware corporation, having an address at 2929 7th Street, Suite 105, Berkeley, CA 94710 (the “Company”), and Rachel E. Haurwitz, Ph.D. (the “Officer”).

WHEREAS, the Company and the Officer are parties to that certain Officer Employment Agreement dated June 30, 2017, as amended (the “Prior Agreement”) and the Company desires to continue to employ the Officer and the Officer desires to continue to be employed by the Company on the new terms and conditions contained herein.

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

### **1. Employment.**

a. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions hereof (the “Term”).

b. Position and Duties. During the Term, the Officer shall serve as the President and Chief Executive Officer of the Company, and shall have supervision and control over and responsibility for the day-to-day business and affairs of the Company as may from time to time be prescribed by the Company’s Board of Directors of the Company, provided that such duties are consistent with the Officer’s position or other positions that they may hold from time to time. The Officer shall devote substantially all of their full working time and efforts to the business of the Company. Notwithstanding the foregoing, the Officer may serve on other boards of directors, with the approval of the Board, or sit on the governing boards of, or hold leadership positions related to community, charitable, academic, and religious activities as long as such services and activities are disclosed to the Board and do not materially interfere with the Officer’s performance of their duties to the Company as provided in this Agreement.

### **2. Compensation and Related Matters.**

a. Base Salary. During the Term, the Officer’s initial annual base salary shall be Five Hundred Seventy Thousand Dollars (\$570,000.00). The Officer’s base salary shall be reviewed from time to time by the Company’s Board of Directors (“Board”) or the Compensation Committee of the Board. The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary shall be payable in a manner that is consistent with the Company’s usual payroll practices.

b. Incentive Compensation. During the Term, the Officer shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Officer’s initial target annual incentive compensation shall be 55% of their Base Salary. Except as otherwise provided herein, to earn incentive compensation, the Officer must be employed by the Company on the day such incentive compensation is paid.

c. Company Benefits. The Officer shall be entitled to all benefits received by employees of the Company in accordance with the Company's policies and plans.

**3. Termination**. During the Term, the Officer's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

a. Termination by the Company for Cause. The Company may terminate the Officer's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) conduct by the Officer constituting a material act of misconduct in connection with the performance of their duties, including, without limitation, misappropriation of funds or property of the Company or any of its subsidiaries or affiliates other than the occasional, customary, and de minimis use of Company property for personal purposes; (ii) the commission by the Officer of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Officer that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries and affiliates if they were retained in their position; (iii) continued non-performance by the Officer of their duties hereunder (other than by reason of the Officer's physical or mental illness, incapacity or disability) that has continued for more than 30 days following written notice of such non-performance from the Board; (iv) a material violation by the Officer of the Company's written policies; or (v) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

b. Termination by the Company Without Cause. The Company may terminate the Officer's employment hereunder at any time without Cause upon written notice of such termination ("Notice of Termination"). Any termination by the Company of the Officer's employment under this Agreement which does not constitute a termination for Cause under Section 3(a) and does not result from the death or disability of the Officer under Section 3(d) or (e), respectively, shall be deemed a termination without Cause.

c. Termination by the Officer. The Officer may terminate their employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Officer has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) a material diminution in the Officer's responsibilities, authority or duties; (ii) the assignment of duties to the Officer that are materially inconsistent with their position; (iii) a decrease of more than 10% of the Officer's Base Salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all officers of the Company; (iv) a change by the Company in the Company location at which the Officer performs their duties to a location that is more than 50 miles (driving distance) from the original location; or (v) the material breach of this Agreement by the Company. "Good Reason Process" shall mean that (i) the Officer reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Officer notifies the Company in writing of the first occurrence of the Good Reason condition within 30 days of the first occurrence of such condition; (iii) the Officer cooperates in good faith with the Company's efforts, for a period of 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Officer terminates their employment within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.



d. Death. The Officer's employment hereunder shall terminate upon their death.

e. Disability. The Company may terminate the Officer's employment if they are disabled and unable to perform the essential functions of the Officer's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period and the Company shall provide a Notice of Termination at that time. If any question shall arise as to whether during any period the Officer is disabled so as to be unable to perform the essential functions of the Officer's then existing position or positions with or without reasonable accommodation, the Officer may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Officer or the Officer's guardian has no reasonable objection as to whether the Officer is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Officer shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Officer shall fail to submit such certification, the Company's determination of such issue shall be binding on the Officer. Nothing in this Section 3(b) shall be construed to waive the Officer's rights, if any, under existing federal and state law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq. and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

f. Notice of Termination. Except for termination as specified in Section 3(d), any termination of the Officer's employment by the Company or any such termination by the Officer shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a written notice which shall indicate the specific termination provision in this Agreement relied upon.

g. Date of Termination. "Date of Termination" shall mean: (i) if the Officer's employment is terminated by the Company for Cause under Section 3(a) or without Cause under Section 3(b) or on account of disability under Section 3(e), the date on which Notice of Termination is given; (ii) if the Officer's employment is terminated by the Officer under Section 3(c) without Good Reason, 30 days after the date on which a Notice of Termination is given; (iii) if the Officer's employment is terminated by the Officer under Section 3(c) with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period; and (iv) if the Officer's employment is terminated by their death, the date of their death. Notwithstanding the foregoing, in the event that the Officer gives a Notice of Termination to the Company under Section 3(c), the Company may unilaterally and solely at its own discretion accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement; provided, however, that in no event shall such accelerated Date of Termination be earlier than the date on which the Notice of Termination is delivered to the Company.

#### **4. Compensation Upon Termination.**

a. **Termination Generally.** If the Officer's employment with the Company is terminated for any reason, the Company shall pay or provide to the Officer (or to their authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements in accordance with Company policy, and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Officer's Date of Termination; and (ii) any vested benefits the Officer may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

b. **Termination by the Company Without Cause or by the Officer with Good Reason.** During the Term, if the Officer's employment is terminated by the Company without Cause as provided in Section 3(b), or the Officer terminates their employment for Good Reason as provided in Section 3(c), then the Company shall provide the Officer with the Accrued Benefit and the compensation and benefits set forth in this Section 4(b), the latter subject to the Officer signing a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property, and non-disparagement, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release: (i) the Company shall pay the Officer an amount equal to 12 months of the Officer's Base Salary (the "Severance Amount"); (ii) if the Officer (and their dependents, if applicable) was participating in the Company's group health plans immediately prior to the Date of Termination and the Officer elects COBRA health continuation for their self (and their dependents, if applicable), then the Company shall pay for 12 months or the Officer's COBRA health continuation period, whichever ends earlier, the COBRA health contribution that the Company would have made to provide health insurance to the Officer (and their dependents, if applicable) if the Officer had remained employed by the Company; provided, however, that the Company shall only be required to pay that percentage of dependent health insurance that the Company would be paying if the Officer had remained employed by the Company; (iii) 100% of the Officer's unvested stock options and restricted stock outstanding as of the Effective Date, if any, shall become immediately vested, and immediately prior to the expiration of the three month post-termination exercise period for the stock options, such period will be extended so that the Officer shall have 12 months from the Date of Termination in which to exercise their stock options (regardless of any language to the contrary in any stock plan then in effect, but subject to the expiration date of the stock options); and (iv) the amounts payable under Sections 4(b)(i) and (ii) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 12 months commencing on the first regularly scheduled payroll date that is at least 30 days after the Date of Termination, provided that the Separation Agreement and Release becomes fully effective; provided, however, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

c. **Change in Control.** During the Term, if within 12 months after a Change in Control as defined herein or within three months prior to a 409A Change in Control as defined herein, the

Officer's employment is terminated by the Company without Cause as provided in Section 3(b) or the Officer terminates their employment for Good Reason as provided in Section 3(c), then, subject to the signing of the Separation Agreement and Release by the Officer and the Separation Agreement and Release becoming fully effective all within the time frame set forth in the Separation Agreement and Release, the Officer shall receive the benefits set forth in Section 4(b)(i), (ii), and (iii) and 100% of the Officer's then unvested stock options and time-based restricted stock shall become immediately vested; provided, however, that the number of months of base salary and benefits continuation in Sections 4(b)(i) and (ii) shall be increased to 18 months and the Officer shall also be provided with 1 1/2 times their target bonus amount for the year in which the Date of Termination occurs, which target bonus amount is payable in a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control; provided, further that notwithstanding the language in Section 4(b)(iv), if the Change in Control is a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets under Section 409A of the Code (a "409A Change in Control"), then the Severance Amount set forth in Section 4(b)(i) shall be payable as a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination, subject to the Separation Agreement and Release having become fully effective (for clarity, the COBRA payments set forth in Section 4(b)(ii) shall be paid in accordance with Section 4(b)(iv)) or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control. For purposes of this Section 4(c), "Change in Control" shall mean any of the following: (i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); or (ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or (iii) the consummation of (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50% of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company. Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50% or more of the combined voting power of all of the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence

shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50% or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred.

#### **5. Additional Limitations and Section 409A.**

a. Additional Limitations. Notwithstanding anything to the contrary in this Agreement, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Officer, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Officer becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Officer receiving a higher After Tax Amount (as defined below) than the Officer would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c). For purposes of this Section 5(a), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Officer as a result of the Officer's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Officer shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Officer within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Officer. Any determination by the Accounting Firm shall be binding upon the Company and the Officer.

b. Section 409A. Notwithstanding anything to the contrary in this Agreement, if at the time of the Officer's separation from service within the meaning of Section 409A of the Code, the Company determines that the Officer is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Officer becomes entitled to under this Agreement on account of the Officer's separation from service would be

considered deferred compensation otherwise subject to the 20% additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) 6 months and one day after the Officer's separation from service or (B) the Officer's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Officer during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Officer's termination of employment, then such payments or benefits shall be payable only upon the Officer's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h). The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party. The Company makes no representation or warranty and shall have no liability to the Officer or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section 409A.

**6. Litigation and Regulatory Cooperation.** During and after the Term, the Officer shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while the Officer was employed by the Company. The Officer's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Term, the Officer also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Officer was employed by the Company. The Company shall reimburse the Officer for any reasonable out-of-pocket expenses incurred in connection with the Officer's performance of obligations pursuant to this Section 6 and, after their employment with the Company terminates, the Officer may be entitled for reasonable compensation for their time.

For the avoidance of doubt, nothing in this Agreement shall be interpreted or applied to prohibit the Officer from making any good faith report to any governmental agency or other governmental entity concerning any act or omission that the Officer reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation.

**7. Relief.** The Officer agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Officer of this Agreement, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Officer agrees that if the Officer breaches, or proposes to breach, this Agreement, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company. In addition, in the event the Officer breaches the Confidential Information and Invention Assignment Agreement, effective as of September 10, 2020, by and between the Company and the Officer (“CIIA”), during a period when they are receiving severance payments pursuant to Section 4(b) or (c), the Company shall have the right to suspend or terminate such severance payments. Such suspension or termination shall not limit the Company’s other options with respect to relief for such breach and shall not relieve the Officer of their duties under this Agreement.

**8. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, and the parties hereby consent to the jurisdiction of the state and federal courts in the State of California.

**9. Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter, including the Prior Agreement, with the sole exception of the CIIA and the Indemnification Agreement, dated September 11, 2014, both by and between the Company and the Officer. If there are any conflicts between the terms and conditions of the CIIA and this Agreement, the terms and conditions of this Agreement shall govern.

**10. Successor to the Officer.** This Agreement shall inure to the benefit of and be enforceable by the Officer’s personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Officer’s death after their termination of employment but prior to the completion by the Company of all payments due them under this Agreement, the Company shall continue such payments to the Officer’s beneficiary designated in writing to the Company prior to their death (or to their estate, if the Officer fails to make such designation).

**11. Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**12. Survival.** The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Officer's employment to the extent necessary to effectuate the terms contained herein.

**13. Waiver.** No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

**14. Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Officer at the last address the Officer has filed in writing with the Company or, in the case of the Company, at the address set forth above to the President and Chief Executive Officer with a copy to legalnotices@cariboubio.com; provided that if the Officer providing notice is the President and Chief Executive Officer, they are not required to provide notice to themselves but instead shall provide written notice to the Chief Legal Officer.

**15. Amendment.** This Agreement may be amended or modified only by a written instrument signed by the Officer and by a duly authorized representative of the Company.

**16. Successor to Company.** The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

**17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Caribou Biosciences, Inc.**

**Rachel E. Haurwitz, Ph.D.**

By: /s/ Barbara G. McClung  
Name: Barbara G. McClung  
Title: Chief Legal Officer & Secretary

By: /s/ Rachel E. Haurwitz

## OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement (“Agreement”) is amended and restated as of July 27, 2021 (“Effective Date”), and is by and between Caribou Biosciences, Inc., a Delaware corporation, having an address at 2929 7th Street, Suite 105, Berkeley, CA 94710 (the “Company”), and Steven B. Kanner, Ph.D. (the “Officer”).

WHEREAS, the Company and the Officer are parties to that certain Officer Employment Agreement dated June 30, 2017, as amended (the “Prior Agreement”) and the Company desires to continue to employ the Officer and the Officer desires to continue to be employed by the Company on the new terms and conditions contained herein.

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

### **1. Employment.**

a. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions hereof (the “Term”).

b. Position and Duties. During the Term, the Officer shall serve as the Chief Scientific Officer of the Company, and shall have supervision and control over and responsibility for the day-to-day business and affairs of the Company as may from time to time be prescribed by the Company’s President and Chief Executive Officer of the Company, provided that such duties are consistent with the Officer’s position or other positions that they may hold from time to time. The Officer shall devote substantially all of their full working time and efforts to the business of the Company. Notwithstanding the foregoing, the Officer may serve on other boards of directors, with the approval of the Board, or sit on the governing boards of, or hold leadership positions related to community, charitable, academic, and religious activities as long as such services and activities are disclosed to the Board and do not materially interfere with the Officer’s performance of their duties to the Company as provided in this Agreement.

### **2. Compensation and Related Matters.**

a. Base Salary. During the Term, the Officer’s initial annual base salary shall be Four Hundred Forty Thousand Dollars (\$440,000.00). The Officer’s base salary shall be reviewed from time to time by the Company’s Board of Directors (“Board”) or the Compensation Committee of the Board. The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary shall be payable in a manner that is consistent with the Company’s usual payroll practices.

b. Incentive Compensation. During the Term, the Officer shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Officer’s initial target annual incentive compensation shall be 40% of their Base Salary. Except as otherwise provided herein, to earn incentive compensation, the Officer must be employed by the Company on the day such incentive compensation is paid.



c. Company Benefits. The Officer shall be entitled to all benefits received by employees of the Company in accordance with the Company's policies and plans.

**3. Termination**. During the Term, the Officer's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

a. Termination by the Company for Cause. The Company may terminate the Officer's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) conduct by the Officer constituting a material act of misconduct in connection with the performance of their duties, including, without limitation, misappropriation of funds or property of the Company or any of its subsidiaries or affiliates other than the occasional, customary, and de minimis use of Company property for personal purposes; (ii) the commission by the Officer of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Officer that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries and affiliates if they were retained in their position; (iii) continued non-performance by the Officer of their duties hereunder (other than by reason of the Officer's physical or mental illness, incapacity or disability) that has continued for more than 30 days following written notice of such non-performance from the Board; (iv) a material violation by the Officer of the Company's written policies; or (v) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

b. Termination by the Company Without Cause. The Company may terminate the Officer's employment hereunder at any time without Cause upon written notice of such termination ("Notice of Termination"). Any termination by the Company of the Officer's employment under this Agreement which does not constitute a termination for Cause under Section 3(a) and does not result from the death or disability of the Officer under Section 3(d) or (e), respectively, shall be deemed a termination without Cause.

c. Termination by the Officer. The Officer may terminate their employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Officer has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) a material diminution in the Officer's responsibilities, authority or duties; (ii) the assignment of duties to the Officer that are materially inconsistent with their position; (iii) a decrease of more than 10% of the Officer's Base Salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all officers of the Company; (iv) a change by the Company in the Company location at which the Officer performs their duties to a location that is more than 50 miles (driving distance) from the original location; or (v) the material breach of this Agreement by the Company. "Good Reason Process" shall mean that (i) the Officer reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Officer notifies the Company in writing of the first occurrence of the Good Reason condition within 30 days of the first occurrence of such condition; (iii) the Officer cooperates in good faith with the Company's efforts, for a period of 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Officer terminates their employment within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

d. Death. The Officer's employment hereunder shall terminate upon their death.

e. Disability. The Company may terminate the Officer's employment if they are disabled and unable to perform the essential functions of the Officer's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period and the Company shall provide a Notice of Termination at that time. If any question shall arise as to whether during any period the Officer is disabled so as to be unable to perform the essential functions of the Officer's then existing position or positions with or without reasonable accommodation, the Officer may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Officer or the Officer's guardian has no reasonable objection as to whether the Officer is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Officer shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Officer shall fail to submit such certification, the Company's determination of such issue shall be binding on the Officer. Nothing in this Section 3(b) shall be construed to waive the Officer's rights, if any, under existing federal and state law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq. and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

f. Notice of Termination. Except for termination as specified in Section 3(d), any termination of the Officer's employment by the Company or any such termination by the Officer shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a written notice which shall indicate the specific termination provision in this Agreement relied upon.

g. Date of Termination. "Date of Termination" shall mean: (i) if the Officer's employment is terminated by the Company for Cause under Section 3(a) or without Cause under Section 3(b) or on account of disability under Section 3(e), the date on which Notice of Termination is given; (ii) if the Officer's employment is terminated by the Officer under Section 3(c) without Good Reason, 30 days after the date on which a Notice of Termination is given; (iii) if the Officer's employment is terminated by the Officer under Section 3(c) with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period; and (iv) if the Officer's employment is terminated by their death, the date of their death. Notwithstanding the foregoing, in the event that the Officer gives a Notice of Termination to the Company under Section 3(c), the Company may unilaterally and solely at its own discretion accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement; provided, however, that in no event shall such accelerated Date of Termination be earlier than the date on which the Notice of Termination is delivered to the Company.

#### **4. Compensation Upon Termination.**

a. **Termination Generally.** If the Officer's employment with the Company is terminated for any reason, the Company shall pay or provide to the Officer (or to their authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements in accordance with Company policy, and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Officer's Date of Termination; and (ii) any vested benefits the Officer may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

b. **Termination by the Company Without Cause or by the Officer with Good Reason.** During the Term, if the Officer's employment is terminated by the Company without Cause as provided in Section 3(b), or the Officer terminates their employment for Good Reason as provided in Section 3(c), then the Company shall provide the Officer with the Accrued Benefit and the compensation and benefits set forth in this Section 4(b), the latter subject to the Officer signing a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property, and non-disparagement, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release: (i) the Company shall pay the Officer an amount equal to 9 months of the Officer's Base Salary (the "Severance Amount"); (ii) if the Officer (and their dependents, if applicable) was participating in the Company's group health plans immediately prior to the Date of Termination and the Officer elects COBRA health continuation for their self (and their dependents, if applicable), then the Company shall pay for 9 months or the Officer's COBRA health continuation period, whichever ends earlier, the COBRA health contribution that the Company would have made to provide health insurance to the Officer (and their dependents, if applicable) if the Officer had remained employed by the Company; provided, however, that the Company shall only be required to pay that percentage of dependent health insurance that the Company would be paying if the Officer had remained employed by the Company; (iii) 100% of the Officer's unvested stock options and restricted stock outstanding as of the Effective Date, if any, shall become immediately vested, and immediately prior to the expiration of the three month post-termination exercise period for the stock options, such period will be extended so that the Officer shall have 12 months from the Date of Termination in which to exercise their stock options (regardless of any language to the contrary in any stock plan then in effect, but subject to the expiration date of the stock options); and (iv) the amounts payable under Sections 4(b)(i) and (ii) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 9 months commencing on the first regularly scheduled payroll date that is at least 30 days after the Date of Termination, provided that the Separation Agreement and Release becomes fully effective; provided, however, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

c. **Change in Control.** During the Term, if within 12 months after a Change in Control as defined herein, or within three months prior to a 409A Change in Control as defined herein, the

Officer's employment is terminated by the Company without Cause as provided in Section 3(b) or the Officer terminates their employment for Good Reason as provided in Section 3(c), then, subject to the signing of the Separation Agreement and Release by the Officer and the Separation Agreement and Release becoming fully effective all within the time frame set forth in the Separation Agreement and Release, the Officer shall receive the benefits set forth in Section 4(b)(i), (ii), and (iii) and 100% of the Officer's then unvested stock options and time-based restricted stock shall become immediately vested; provided, however, that the number of months of base salary and benefits continuation in Sections 4(b)(i) and (ii) shall be increased to 12 months and the Officer shall also be provided with one times their target bonus amount for the year in which the Date of Termination occurs, which target bonus amount is payable in a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control; provided, further that notwithstanding the language in Section 4(b)(iv), if the Change in Control is a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets under Section 409A of the Code (a "409A Change in Control"), then the Severance Amount set forth in Section 4(b)(i) shall be payable as a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination, subject to the Separation Agreement and Release having become fully effective (for clarity, the COBRA payments set forth in Section 4(b)(ii) shall be paid in accordance with Section 4(b)(iv)) or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control. For purposes of this Section 4(c), "Change in Control" shall mean any of the following: (i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); or (ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or (iii) the consummation of (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50% of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company. Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50% or more of the combined voting power of all of the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence

shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50% or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred.

#### **5. Additional Limitations and Section 409A.**

a. **Additional Limitations.** Notwithstanding anything to the contrary in this Agreement, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Officer, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Officer becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Officer receiving a higher After Tax Amount (as defined below) than the Officer would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c). For purposes of this Section 5(a), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Officer as a result of the Officer's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Officer shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Officer within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Officer. Any determination by the Accounting Firm shall be binding upon the Company and the Officer.

b. **Section 409A.** Notwithstanding anything to the contrary in this Agreement, if at the time of the Officer's separation from service within the meaning of Section 409A of the Code, the Company determines that the Officer is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Officer becomes entitled to under this Agreement on account of the Officer's separation from service would be

considered deferred compensation otherwise subject to the 20% additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) 6 months and one day after the Officer's separation from service or (B) the Officer's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Officer during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Officer's termination of employment, then such payments or benefits shall be payable only upon the Officer's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h). The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party. The Company makes no representation or warranty and shall have no liability to the Officer or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section 409A.

**6. Litigation and Regulatory Cooperation.** During and after the Term, the Officer shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while the Officer was employed by the Company. The Officer's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Term, the Officer also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Officer was employed by the Company. The Company shall reimburse the Officer for any reasonable out-of-pocket expenses incurred in connection with the Officer's performance of obligations pursuant to this Section 6 and, after their employment with the Company terminates, the Officer may be entitled for reasonable compensation for their time.

For the avoidance of doubt, nothing in this Agreement shall be interpreted or applied to prohibit the Officer from making any good faith report to any governmental agency or other governmental entity concerning any act or omission that the Officer reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation.

**7. Relief.** The Officer agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Officer of this Agreement, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Officer agrees that if the Officer breaches, or proposes to breach, this Agreement, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company. In addition, in the event the Officer breaches the Confidential Information and Invention Assignment Agreement, effective as of September 9, 2020, by and between the Company and the Officer (“CIIA”), during a period when they are receiving severance payments pursuant to Section 4(b) or (c), the Company shall have the right to suspend or terminate such severance payments. Such suspension or termination shall not limit the Company’s other options with respect to relief for such breach and shall not relieve the Officer of their duties under this Agreement.

**8. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, and the parties hereby consent to the jurisdiction of the state and federal courts in the State of California.

**9. Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter, including the Prior Agreement, with the sole exception of the CIIA and the Indemnification Agreement, dated June 30, 2017, both by and between the Company and the Officer. If there are any conflicts between the terms and conditions of the CIIA and this Agreement, the terms and conditions of this Agreement shall govern.

**10. Successor to the Officer.** This Agreement shall inure to the benefit of and be enforceable by the Officer’s personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Officer’s death after their termination of employment but prior to the completion by the Company of all payments due them under this Agreement, the Company shall continue such payments to the Officer’s beneficiary designated in writing to the Company prior to their death (or to their estate, if the Officer fails to make such designation).

**11. Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**12. Survival.** The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Officer's employment to the extent necessary to effectuate the terms contained herein.

**13. Waiver.** No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

**14. Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Officer at the last address the Officer has filed in writing with the Company or, in the case of the Company, at the address set forth above to the President and Chief Executive Officer with a copy to legalnotices@cariboubio.com; provided that if the Officer providing notice is the President and Chief Executive Officer, they are not required to provide notice to themselves but instead shall provide written notice to the Chief Legal Officer.

**15. Amendment.** This Agreement may be amended or modified only by a written instrument signed by the Officer and by a duly authorized representative of the Company.

**16. Successor to Company.** The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

**17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Caribou Biosciences, Inc.**

**Steven B. Kanner, Ph.D.**

By: /s/ Rachel E. Haurwitz

By: /s/ Steve Kanner

Name: Rachel E. Haurwitz, Ph.D.

Title: President and CEO



## OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement (“Agreement”) is amended and restated as of July 27, 2021 (“Effective Date”), and is by and between Caribou Biosciences, Inc., a Delaware corporation, having an address at 2929 7th Street, Suite 105, Berkeley, CA 94710 (the “Company”), and Barbara G. McClung, J.D. (the “Officer”).

WHEREAS, the Company and the Officer are parties to that certain Officer Employment Agreement dated June 30, 2017, as amended (the “Prior Agreement”) and the Company desires to continue to employ the Officer and the Officer desires to continue to be employed by the Company on the new terms and conditions contained herein.

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

### **1. Employment.**

a. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions hereof (the “Term”).

b. Position and Duties. During the Term, the Officer shall serve as the Chief Legal Officer and Corporate Secretary of the Company, and shall have supervision and control over and responsibility for the day-to-day business and affairs of the Company as may from time to time be prescribed by the Company’s President and Chief Executive Officer of the Company, provided that such duties are consistent with the Officer’s position or other positions that they may hold from time to time. The Officer shall devote substantially all of their full working time and efforts to the business of the Company. Notwithstanding the foregoing, the Officer may serve on other boards of directors, with the approval of the Board, or sit on the governing boards of, or hold leadership positions related to community, charitable, academic, and religious activities as long as such services and activities are disclosed to the Board and do not materially interfere with the Officer’s performance of their duties to the Company as provided in this Agreement.

### **2. Compensation and Related Matters.**

a. Base Salary. During the Term, the Officer’s initial annual base salary shall be Four Hundred Forty Thousand Dollars (\$440,000.00). The Officer’s base salary shall be reviewed from time to time by the Company’s Board of Directors (“Board”) or the Compensation Committee of the Board. The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary shall be payable in a manner that is consistent with the Company’s usual payroll practices.

b. Incentive Compensation. During the Term, the Officer shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Officer’s initial target annual incentive compensation shall be 40% of their Base Salary. Except as otherwise provided herein, to earn incentive compensation, the Officer must be employed by the Company on the day such incentive compensation is paid.

c. Company Benefits. The Officer shall be entitled to all benefits received by employees of the Company in accordance with the Company's policies and plans.

**3. Termination**. During the Term, the Officer's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

a. Termination by the Company for Cause. The Company may terminate the Officer's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) conduct by the Officer constituting a material act of misconduct in connection with the performance of their duties, including, without limitation, misappropriation of funds or property of the Company or any of its subsidiaries or affiliates other than the occasional, customary, and de minimis use of Company property for personal purposes; (ii) the commission by the Officer of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Officer that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries and affiliates if they were retained in their position; (iii) continued non-performance by the Officer of their duties hereunder (other than by reason of the Officer's physical or mental illness, incapacity or disability) that has continued for more than 30 days following written notice of such non-performance from the Board; (iv) a material violation by the Officer of the Company's written policies; or (v) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

b. Termination by the Company Without Cause. The Company may terminate the Officer's employment hereunder at any time without Cause upon written notice of such termination ("Notice of Termination"). Any termination by the Company of the Officer's employment under this Agreement which does not constitute a termination for Cause under Section 3(a) and does not result from the death or disability of the Officer under Section 3(d) or (e), respectively, shall be deemed a termination without Cause.

c. Termination by the Officer. The Officer may terminate their employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Officer has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) a material diminution in the Officer's responsibilities, authority or duties; (ii) the assignment of duties to the Officer that are materially inconsistent with their position; (iii) a decrease of more than 10% of the Officer's Base Salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all officers of the Company; (iv) a change by the Company in the Company location at which the Officer performs their duties to a location that is more than 50 miles (driving distance) from the original location; or (v) the material breach of this Agreement by the Company. "Good Reason Process" shall mean that (i) the Officer reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Officer notifies the Company in writing of the first occurrence of the Good Reason condition within 30 days of the first occurrence of such condition; (iii) the Officer cooperates in good faith with the Company's efforts, for a period of 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Officer terminates their employment within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

d. Death. The Officer's employment hereunder shall terminate upon their death.

e. Disability. The Company may terminate the Officer's employment if they are disabled and unable to perform the essential functions of the Officer's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period and the Company shall provide a Notice of Termination at that time. If any question shall arise as to whether during any period the Officer is disabled so as to be unable to perform the essential functions of the Officer's then existing position or positions with or without reasonable accommodation, the Officer may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Officer or the Officer's guardian has no reasonable objection as to whether the Officer is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Officer shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Officer shall fail to submit such certification, the Company's determination of such issue shall be binding on the Officer. Nothing in this Section 3(b) shall be construed to waive the Officer's rights, if any, under existing federal and state law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq. and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

f. Notice of Termination. Except for termination as specified in Section 3(d), any termination of the Officer's employment by the Company or any such termination by the Officer shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a written notice which shall indicate the specific termination provision in this Agreement relied upon.

g. Date of Termination. "Date of Termination" shall mean: (i) if the Officer's employment is terminated by the Company for Cause under Section 3(a) or without Cause under Section 3(b) or on account of disability under Section 3(e), the date on which Notice of Termination is given; (ii) if the Officer's employment is terminated by the Officer under Section 3(c) without Good Reason, 30 days after the date on which a Notice of Termination is given; (iii) if the Officer's employment is terminated by the Officer under Section 3(c) with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period; and (iv) if the Officer's employment is terminated by their death, the date of their death. Notwithstanding the foregoing, in the event that the Officer gives a Notice of Termination to the Company under Section 3(c), the Company may unilaterally and solely at its own discretion accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement; provided, however, that in no event shall such accelerated Date of Termination be earlier than the date on which the Notice of Termination is delivered to the Company.

#### **4. Compensation Upon Termination.**

a. **Termination Generally.** If the Officer's employment with the Company is terminated for any reason, the Company shall pay or provide to the Officer (or to their authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements in accordance with Company policy, and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Officer's Date of Termination; and (ii) any vested benefits the Officer may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

b. **Termination by the Company Without Cause or by the Officer with Good Reason.** During the Term, if the Officer's employment is terminated by the Company without Cause as provided in Section 3(b), or the Officer terminates their employment for Good Reason as provided in Section 3(c), then the Company shall provide the Officer with the Accrued Benefit and the compensation and benefits set forth in this Section 4(b), the latter subject to the Officer signing a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property, and non-disparagement, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release: (i) the Company shall pay the Officer an amount equal to 9 months of the Officer's Base Salary (the "Severance Amount"); (ii) if the Officer (and their dependents, if applicable) was participating in the Company's group health plans immediately prior to the Date of Termination and the Officer elects COBRA health continuation for their self (and their dependents, if applicable), then the Company shall pay for 9 months or the Officer's COBRA health continuation period, whichever ends earlier, the COBRA health contribution that the Company would have made to provide health insurance to the Officer (and their dependents, if applicable) if the Officer had remained employed by the Company; provided, however, that the Company shall only be required to pay that percentage of dependent health insurance that the Company would be paying if the Officer had remained employed by the Company; (iii) 100% of the Officer's unvested stock options and restricted stock outstanding as of the Effective Date, if any, shall become immediately vested, and immediately prior to the expiration of the three month post-termination exercise period for the stock options, such period will be extended so that the Officer shall have 12 months from the Date of Termination in which to exercise their stock options (regardless of any language to the contrary in any stock plan then in effect, but subject to the expiration date of the stock options); and (iv) the amounts payable under Sections 4(b)(i) and (ii) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 9 months commencing on the first regularly scheduled payroll date that is at least 30 days after the Date of Termination, provided that the Separation Agreement and Release becomes fully effective; provided, however, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

c. **Change in Control.** During the Term, if within 12 months after a Change in Control as defined herein, or within three months prior to a 409A Change in Control as defined herein, the

Officer's employment is terminated by the Company without Cause as provided in Section 3(b) or the Officer terminates their employment for Good Reason as provided in Section 3(c), then, subject to the signing of the Separation Agreement and Release by the Officer and the Separation Agreement and Release becoming fully effective all within the time frame set forth in the Separation Agreement and Release, the Officer shall receive the benefits set forth in Section 4(b)(i), (ii), and (iii), and 100% of the Officer's then unvested stock options and time-based restricted stock shall become immediately vested; provided, however, that the number of months of base salary and benefits continuation in Sections 4(b)(i) and (ii) shall be increased to 12 months and the Officer shall also be provided with one times their target bonus amount for the year in which the Date of Termination occurs, which target bonus amount is payable in a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control; provided, further that notwithstanding the language in Section 4(b)(iv), if the Change in Control is a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets under Section 409A of the Code (a "409A Change in Control"), then the Severance Amount set forth in Section 4(b)(i) shall be payable as a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination, subject to the Separation Agreement and Release having become fully effective (for clarity, the COBRA payments set forth in Section 4(b)(ii) shall be paid in accordance with Section 4(b)(iv)) or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control. For purposes of this Section 4(c), "Change in Control" shall mean any of the following: (i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); or (ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or (iii) the consummation of (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50% of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company. Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50% or more of the combined voting power of all of the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence

shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50% or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred.

#### **5. Additional Limitations and Section 409A.**

a. **Additional Limitations.** Notwithstanding anything to the contrary in this Agreement, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Officer, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Officer becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Officer receiving a higher After Tax Amount (as defined below) than the Officer would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c). For purposes of this Section 5(a), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Officer as a result of the Officer's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Officer shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Officer within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Officer. Any determination by the Accounting Firm shall be binding upon the Company and the Officer.

b. **Section 409A.** Notwithstanding anything to the contrary in this Agreement, if at the time of the Officer's separation from service within the meaning of Section 409A of the Code, the Company determines that the Officer is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Officer becomes entitled to under this Agreement on account of the Officer's separation from service would be

considered deferred compensation otherwise subject to the 20% additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) 6 months and one day after the Officer's separation from service or (B) the Officer's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Officer during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Officer's termination of employment, then such payments or benefits shall be payable only upon the Officer's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h). The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party. The Company makes no representation or warranty and shall have no liability to the Officer or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section 409A.

**6. Litigation and Regulatory Cooperation.** During and after the Term, the Officer shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while the Officer was employed by the Company. The Officer's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Term, the Officer also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Officer was employed by the Company. The Company shall reimburse the Officer for any reasonable out-of-pocket expenses incurred in connection with the Officer's performance of obligations pursuant to this Section 6 and, after their employment with the Company terminates, the Officer may be entitled for reasonable compensation for their time.

For the avoidance of doubt, nothing in this Agreement shall be interpreted or applied to prohibit the Officer from making any good faith report to any governmental agency or other governmental entity concerning any act or omission that the Officer reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation.

**7. Relief.** The Officer agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Officer of this Agreement, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Officer agrees that if the Officer breaches, or proposes to breach, this Agreement, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company. In addition, in the event the Officer breaches the Confidential Information and Invention Assignment Agreement, effective as of September 8, 2020, by and between the Company and the Officer (“CIIA”), during a period when they are receiving severance payments pursuant to Section 4(b) or (c), the Company shall have the right to suspend or terminate such severance payments. Such suspension or termination shall not limit the Company’s other options with respect to relief for such breach and shall not relieve the Officer of their duties under this Agreement.

**8. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, and the parties hereby consent to the jurisdiction of the state and federal courts in the State of California.

**9. Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter, including the Prior Agreement, with the sole exception of the CIIA and the Indemnification Agreement, dated April 29, 2015, both by and between the Company and the Officer. If there are any conflicts between the terms and conditions of the CIIA and this Agreement, the terms and conditions of this Agreement shall govern.

**10. Successor to the Officer.** This Agreement shall inure to the benefit of and be enforceable by the Officer’s personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Officer’s death after their termination of employment but prior to the completion by the Company of all payments due them under this Agreement, the Company shall continue such payments to the Officer’s beneficiary designated in writing to the Company prior to their death (or to their estate, if the Officer fails to make such designation).

**11. Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.





## OFFICER EMPLOYMENT AGREEMENT

This Officer Employment Agreement (“Agreement”) is amended and restated as of July 27, 2021 (“Effective Date”), and is by and between Caribou Biosciences, Inc., a Delaware corporation, having an address at 2929 7th Street, Suite 105, Berkeley, CA 94710 (the “Company”), and Jason O’Byrne (the “Officer”).

WHEREAS, the Company and the Officer are parties to that certain Officer Employment Agreement dated February 8, 2021 (the “Prior Agreement”) and the Company desires to continue to employ the Officer and the Officer desires to continue to be employed by the Company on the new terms and conditions contained herein.

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

### **1. Employment.**

a. Term. The term of this Agreement shall commence on the Effective Date and continue until terminated in accordance with the provisions hereof (the “Term”).

b. Position and Duties. During the Term, the Officer shall serve as the Chief Financial Officer of the Company, and shall have supervision and control over and responsibility for the day-to-day business and affairs of the Company as may from time to time be prescribed by the Company’s Chief Executive Officer, provided that such duties are consistent with the Officer’s position or other positions that they may hold from time to time. The Officer shall devote substantially all of their full working time and efforts to the business of the Company. Notwithstanding the foregoing, the Officer may serve on other boards of directors, with the approval of the Board, or sit on the governing boards of, or hold leadership positions related to community, charitable, academic, and religious activities as long as such services and activities are disclosed to the Board and do not materially interfere with the Officer’s performance of their duties to the Company as provided in this Agreement.

### **2. Compensation and Related Matters.**

a. Base Salary. During the Term, the Officer’s initial annual base salary shall be Four Hundred Fifteen Thousand Dollars (\$415,000.00). The Officer’s base salary shall be reviewed from time to time by the Company’s Board of Directors (“Board”) or the Compensation Committee of the Board. The base salary in effect at any given time is referred to herein as “Base Salary.” The Base Salary shall be payable in a manner that is consistent with the Company’s usual payroll practices.

b. Incentive Compensation. During the Term, the Officer shall be eligible to receive cash incentive compensation as determined by the Board or the Compensation Committee from time to time. The Officer’s initial target annual incentive compensation shall be 40% of their Base Salary. Except as otherwise provided herein, to earn incentive compensation, the Officer must be employed by the Company on the day such incentive compensation is paid.

c. Company Benefits. The Officer shall be entitled to all benefits received by employees of the Company in accordance with the Company's policies and plans.

**3. Termination**. During the Term, the Officer's employment hereunder may be terminated without any breach of this Agreement under the following circumstances:

a. Termination by the Company for Cause. The Company may terminate the Officer's employment hereunder for Cause. For purposes of this Agreement, "Cause" shall mean: (i) conduct by the Officer constituting a material act of misconduct in connection with the performance of their duties, including, without limitation, misappropriation of funds or property of the Company or any of its subsidiaries or affiliates other than the occasional, customary, and de minimis use of Company property for personal purposes; (ii) the commission by the Officer of any felony or a misdemeanor involving moral turpitude, deceit, dishonesty or fraud, or any conduct by the Officer that would reasonably be expected to result in material injury or reputational harm to the Company or any of its subsidiaries and affiliates if they were retained in their position; (iii) continued non-performance by the Officer of their duties hereunder (other than by reason of the Officer's physical or mental illness, incapacity or disability) that has continued for more than 30 days following written notice of such non-performance from the Board; (iv) a material violation by the Officer of the Company's written policies; or (v) failure to cooperate with a bona fide internal investigation or an investigation by regulatory or law enforcement authorities, after being instructed by the Company to cooperate, or the willful destruction or failure to preserve documents or other materials known to be relevant to such investigation or the inducement of others to fail to cooperate or to produce documents or other materials in connection with such investigation.

b. Termination by the Company Without Cause. The Company may terminate the Officer's employment hereunder at any time without Cause upon written notice of such termination ("Notice of Termination"). Any termination by the Company of the Officer's employment under this Agreement which does not constitute a termination for Cause under Section 3(a) and does not result from the death or disability of the Officer under Section 3(d) or (e), respectively, shall be deemed a termination without Cause.

c. Termination by the Officer. The Officer may terminate their employment hereunder at any time for any reason, including but not limited to Good Reason. For purposes of this Agreement, "Good Reason" shall mean that the Officer has complied with the "Good Reason Process" (hereinafter defined) following the occurrence of any of the following events: (i) a material diminution in the Officer's responsibilities, authority or duties; (ii) the assignment of duties to the Officer that are materially inconsistent with their position; (iii) a decrease of more than 10% of the Officer's Base Salary except for across-the-board salary reductions based on the Company's financial performance similarly affecting all officers of the Company; (iv) a change by the Company in the Company location at which the Officer performs their duties to a location that is more than 50 miles (driving distance) from the original location; or (v) the material breach of this Agreement by the Company. "Good Reason Process" shall mean that (i) the Officer reasonably determines in good faith that a "Good Reason" condition has occurred; (ii) the Officer notifies the Company in writing of the first occurrence of the Good Reason condition within 30 days of the first occurrence of such condition; (iii) the Officer cooperates in good faith with the Company's efforts, for a period of 30 days following such notice (the "Cure Period"), to remedy the condition; (iv) notwithstanding such efforts, the Good Reason condition continues to exist; and (v) the Officer terminates their employment within 30 days after the end of the Cure Period. If the Company cures the Good Reason condition during the Cure Period, Good Reason shall be deemed not to have occurred.

d. Death. The Officer's employment hereunder shall terminate upon their death.

e. Disability. The Company may terminate the Officer's employment if they are disabled and unable to perform the essential functions of the Officer's then existing position or positions under this Agreement with or without reasonable accommodation for a period of 180 days (which need not be consecutive) in any 12-month period and the Company shall provide a Notice of Termination at that time. If any question shall arise as to whether during any period the Officer is disabled so as to be unable to perform the essential functions of the Officer's then existing position or positions with or without reasonable accommodation, the Officer may, and at the request of the Company shall, submit to the Company a certification in reasonable detail by a physician selected by the Company to whom the Officer or the Officer's guardian has no reasonable objection as to whether the Officer is so disabled or how long such disability is expected to continue, and such certification shall for the purposes of this Agreement be conclusive of the issue. The Officer shall cooperate with any reasonable request of the physician in connection with such certification. If such question shall arise and the Officer shall fail to submit such certification, the Company's determination of such issue shall be binding on the Officer. Nothing in this Section 3(b) shall be construed to waive the Officer's rights, if any, under existing federal and state law including, without limitation, the Family and Medical Leave Act of 1993, 29 U.S.C. §2601, et seq. and the Americans with Disabilities Act, 42 U.S.C. §12101, et seq.

f. Notice of Termination. Except for termination as specified in Section 3(d), any termination of the Officer's employment by the Company or any such termination by the Officer shall be communicated by written Notice of Termination to the other party hereto. For purposes of this Agreement, a "Notice of Termination" shall mean a written notice which shall indicate the specific termination provision in this Agreement relied upon.

g. Date of Termination. "Date of Termination" shall mean: (i) if the Officer's employment is terminated by the Company for Cause under Section 3(a) or without Cause under Section 3(b) or on account of disability under Section 3(e), the date on which Notice of Termination is given; (ii) if the Officer's employment is terminated by the Officer under Section 3(c) without Good Reason, 30 days after the date on which a Notice of Termination is given; (iii) if the Officer's employment is terminated by the Officer under Section 3(c) with Good Reason, the date on which a Notice of Termination is given after the end of the Cure Period; and (iv) if the Officer's employment is terminated by their death, the date of their death. Notwithstanding the foregoing, in the event that the Officer gives a Notice of Termination to the Company under Section 3(c), the Company may unilaterally and solely at its own discretion accelerate the Date of Termination and such acceleration shall not result in a termination by the Company for purposes of this Agreement; provided, however, that in no event shall such accelerated Date of Termination be earlier than the date on which the Notice of Termination is delivered to the Company.

#### **4. Compensation Upon Termination.**

a. **Termination Generally.** If the Officer's employment with the Company is terminated for any reason, the Company shall pay or provide to the Officer (or to their authorized representative or estate) (i) any Base Salary earned through the Date of Termination, unpaid expense reimbursements in accordance with Company policy, and unused vacation that accrued through the Date of Termination on or before the time required by law but in no event more than 30 days after the Officer's Date of Termination; and (ii) any vested benefits the Officer may have under any employee benefit plan of the Company through the Date of Termination, which vested benefits shall be paid and/or provided in accordance with the terms of such employee benefit plans (collectively, the "Accrued Benefit").

b. **Termination by the Company Without Cause or by the Officer with Good Reason.** During the Term, if the Officer's employment is terminated by the Company without Cause as provided in Section 3(b), or the Officer terminates their employment for Good Reason as provided in Section 3(c), then the Company shall provide the Officer with the Accrued Benefit and the compensation and benefits set forth in this Section 4(b), the latter subject to the Officer signing a separation agreement containing, among other provisions, a general release of claims in favor of the Company and related persons and entities, confidentiality, return of property, and non-disparagement, in a form and manner satisfactory to the Company (the "Separation Agreement and Release") and the Separation Agreement and Release becoming fully effective, all within the time frame set forth in the Separation Agreement and Release: (i) the Company shall pay the Officer an amount equal to 9 months of the Officer's Base Salary (the "Severance Amount"); (ii) if the Officer (and their dependents, if applicable) was participating in the Company's group health plans immediately prior to the Date of Termination and the Officer elects COBRA health continuation for their self (and their dependents, if applicable), then the Company shall pay for 9 months or the Officer's COBRA health continuation period, whichever ends earlier, the COBRA health contribution that the Company would have made to provide health insurance to the Officer (and their dependents, if applicable) if the Officer had remained employed by the Company; provided, however, that the Company shall only be required to pay that percentage of dependent health insurance that the Company would be paying if the Officer had remained employed by the Company; (iii) 100% of the Officer's unvested stock options and restricted stock outstanding as of the Effective Date, if any, shall become immediately vested, and immediately prior to the expiration of the three month post-termination exercise period for the stock options, such period will be extended so that the Officer shall have 12 months from the Date of Termination in which to exercise their stock options (regardless of any language to the contrary in any stock plan then in effect, but subject to the expiration date of the stock options); and (iv) the amounts payable under Sections 4(b)(i) and (ii) shall be paid out in substantially equal installments in accordance with the Company's payroll practice over 9 months commencing on the first regularly scheduled payroll date that is at least 30 days after the Date of Termination, provided that the Separation Agreement and Release becomes fully effective; provided, however, that the initial payment shall include a catch-up payment to cover amounts retroactive to the day immediately following the Date of Termination. Each payment pursuant to this Agreement is intended to constitute a separate payment for purposes of Treasury Regulation Section 1.409A-2(b)(2).

c. **Change in Control.** During the Term, if within 12 months after a Change in Control as defined herein, or within three months prior to a 409A Change in Control as defined herein, the

Officer's employment is terminated by the Company without Cause as provided in Section 3(b) or the Officer terminates their employment for Good Reason as provided in Section 3(c), then, subject to the signing of the Separation Agreement and Release by the Officer and the Separation Agreement and Release becoming fully effective all within the time frame set forth in the Separation Agreement and Release, the Officer shall receive the benefits set forth in Section 4(b)(i), (ii), and (iii) and 100% of the Officer's then unvested stock options and time-based restricted stock shall become immediately vested; provided, however, that the number of months of base salary and benefits continuation in Sections 4(b)(i) and (ii) shall be increased to 12 months and the Officer shall also be provided with one times their target bonus amount for the year in which the Date of Termination occurs, which target bonus amount is payable in a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control; provided, further that notwithstanding the language in Section 4(b)(iv), if the Change in Control is a change in the ownership or effective control of the Company, or in the ownership of a substantial portion of the Company's assets under Section 409A of the Code, (a "409A Change in Control"), then the Severance Amount set forth in Section 4(b)(i) shall be payable as a lump sum on the first regularly scheduled payroll date that is at least 30 days following the Date of Termination, subject to the Separation Agreement and Release having become fully effective (for clarity, the COBRA payments set forth in Section 4(b)(ii) shall be paid in accordance with Section 4(b)(iv)) or, if the Officer's employment was terminated within three months prior to a 409A Change in Control, upon the 409A Change in Control. For purposes of this Section 4(c), "Change in Control" shall mean any of the following: (i) any "person," as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Act") (other than the Company, any of its subsidiaries, or any trustee, fiduciary or other person or entity holding securities under any employee benefit plan or trust of the Company or any of its subsidiaries), together with all "affiliates" and "associates" (as such terms are defined in Rule 12b-2 under the Act) of such person, shall become the "beneficial owner" (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, of securities of the Company representing 50% or more of the combined voting power of the Company's then outstanding securities having the right to vote in an election of the Board ("Voting Securities") (in such case other than as a result of an acquisition of securities directly from the Company); or (ii) the date a majority of the members of the Board is replaced during any 12-month period by directors whose appointment or election is not endorsed by a majority of the members of the Board before the date of the appointment or election; or (iii) the consummation of (A) any consolidation or merger of the Company where the stockholders of the Company, immediately prior to the consolidation or merger, would not, immediately after the consolidation or merger, beneficially own (as such term is defined in Rule 13d-3 under the Act), directly or indirectly, shares representing in the aggregate more than 50% of the voting shares of the Company issuing cash or securities in the consolidation or merger (or of its ultimate parent corporation, if any), or (B) any sale or other transfer (in one transaction or a series of transactions contemplated or arranged by any party as a single plan) of all or substantially all of the assets of the Company. Notwithstanding the foregoing, a "Change in Control" shall not be deemed to have occurred for purposes of the foregoing clause solely as the result of an acquisition of securities by the Company that, by reducing the number of shares of Voting Securities outstanding, increases the proportionate number of Voting Securities beneficially owned by any person to 50% or more of the combined voting power of all of the then outstanding Voting Securities; provided, however, that if any person referred to in this sentence

shall thereafter become the beneficial owner of any additional shares of Voting Securities (other than pursuant to a stock split, stock dividend, or similar transaction or as a result of an acquisition of securities directly from the Company) and immediately thereafter beneficially owns 50% or more of the combined voting power of all of the then outstanding Voting Securities, then a "Change in Control" shall be deemed to have occurred.

#### **5. Additional Limitations and Section 409A.**

a. Additional Limitations. Notwithstanding anything to the contrary in this Agreement, in the event that the amount of any compensation, payment or distribution by the Company to or for the benefit of the Officer, whether paid or payable or distributed or distributable pursuant to the terms of this Agreement or otherwise, calculated in a manner consistent with Section 280G of the Internal Revenue Code of 1986, as amended (the "Code"), and the applicable regulations thereunder (the "Aggregate Payments"), would be subject to the excise tax imposed by Section 4999 of the Code, then the Aggregate Payments shall be reduced (but not below zero) so that the sum of all of the Aggregate Payments shall be \$1.00 less than the amount at which the Officer becomes subject to the excise tax imposed by Section 4999 of the Code; provided that such reduction shall only occur if it would result in the Officer receiving a higher After Tax Amount (as defined below) than the Officer would receive if the Aggregate Payments were not subject to such reduction. In such event, the Aggregate Payments shall be reduced in the following order, in each case, in reverse chronological order beginning with the Aggregate Payments that are to be paid the furthest in time from consummation of the transaction that is subject to Section 280G of the Code: (1) cash payments not subject to Section 409A of the Code; (2) cash payments subject to Section 409A of the Code; (3) equity-based payments and acceleration; and (4) non-cash forms of benefits; provided that in the case of all the foregoing Aggregate Payments all amounts or payments that are not subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c) shall be reduced before any amounts that are subject to calculation under Treas. Reg. §1.280G-1, Q&A-24(b) or (c). For purposes of this Section 5(a), the "After Tax Amount" means the amount of the Aggregate Payments less all federal, state, and local income, excise and employment taxes imposed on the Officer as a result of the Officer's receipt of the Aggregate Payments. For purposes of determining the After Tax Amount, the Officer shall be deemed to pay federal income taxes at the highest marginal rate of federal income taxation applicable to individuals for the calendar year in which the determination is to be made, and state and local income taxes at the highest marginal rates of individual taxation in each applicable state and locality, net of the maximum reduction in federal income taxes which could be obtained from deduction of such state and local taxes. The determination as to whether a reduction in the Aggregate Payments shall be made pursuant to Section 5(b)(i) shall be made by a nationally recognized accounting firm selected by the Company (the "Accounting Firm"), which shall provide detailed supporting calculations both to the Company and the Officer within 15 business days of the Date of Termination, if applicable, or at such earlier time as is reasonably requested by the Company or the Officer. Any determination by the Accounting Firm shall be binding upon the Company and the Officer.

b. Section 409A. Notwithstanding anything to the contrary in this Agreement, if at the time of the Officer's separation from service within the meaning of Section 409A of the Code, the Company determines that the Officer is a "specified employee" within the meaning of Section 409A(a)(2)(B)(i) of the Code, then to the extent any payment or benefit that the Officer becomes entitled to under this Agreement on account of the Officer's separation from service would be

considered deferred compensation otherwise subject to the 20% additional tax imposed pursuant to Section 409A(a) of the Code as a result of the application of Section 409A(a)(2)(B)(i) of the Code, such payment shall not be payable and such benefit shall not be provided until the date that is the earlier of (A) 6 months and one day after the Officer's separation from service or (B) the Officer's death. If any such delayed cash payment is otherwise payable on an installment basis, the first payment shall include a catch-up payment covering amounts that would otherwise have been paid during the six-month period but for the application of this provision, and the balance of the installments shall be payable in accordance with their original schedule. All in-kind benefits provided and expenses eligible for reimbursement under this Agreement shall be provided by the Company or incurred by the Officer during the time periods set forth in this Agreement. All reimbursements shall be paid as soon as administratively practicable, but in no event shall any reimbursement be paid after the last day of the taxable year following the taxable year in which the expense was incurred. The amount of in-kind benefits provided or reimbursable expenses incurred in one taxable year shall not affect the in-kind benefits to be provided or the expenses eligible for reimbursement in any other taxable year (except for any lifetime or other aggregate limitation applicable to medical expenses). Such right to reimbursement or in-kind benefits is not subject to liquidation or exchange for another benefit. To the extent that any payment or benefit described in this Agreement constitutes "non-qualified deferred compensation" under Section 409A of the Code, and to the extent that such payment or benefit is payable upon the Officer's termination of employment, then such payments or benefits shall be payable only upon the Officer's "separation from service." The determination of whether and when a separation from service has occurred shall be made in accordance with the presumptions set forth in Treasury Regulation Section 1.409A-1(h). The parties intend that this Agreement will be administered in accordance with Section 409A of the Code. To the extent that any provision of this Agreement is ambiguous as to its compliance with Section 409A of the Code, the provision shall be read in such a manner so that all payments hereunder comply with Section 409A of the Code. The parties agree that this Agreement may be amended, as reasonably requested by either party, and as may be necessary to fully comply with Section 409A of the Code and all related rules and regulations in order to preserve the payments and benefits provided hereunder without additional cost to either party. The Company makes no representation or warranty and shall have no liability to the Officer or any other person if any provisions of this Agreement are determined to constitute deferred compensation subject to Section 409A of the Code but do not satisfy an exemption from, or the conditions of, such Section 409A.

**6. Litigation and Regulatory Cooperation.** During and after the Term, the Officer shall cooperate fully with the Company in the defense or prosecution of any claims or actions now in existence or which may be brought in the future against or on behalf of the Company that relate to events or occurrences that transpired while the Officer was employed by the Company. The Officer's full cooperation in connection with such claims or actions shall include, but not be limited to, being available to meet with counsel to prepare for discovery or trial and to act as a witness on behalf of the Company at mutually convenient times. During and after the Term, the Officer also shall cooperate fully with the Company in connection with any investigation or review of any federal, state or local regulatory authority as any such investigation or review relates to events or occurrences that transpired while the Officer was employed by the Company. The Company shall reimburse the Officer for any reasonable out-of-pocket expenses incurred in connection with the Officer's performance of obligations pursuant to this Section 6 and, after their employment with the Company terminates, the Officer may be entitled for reasonable compensation for their time.



For the avoidance of doubt, nothing in this Agreement shall be interpreted or applied to prohibit the Officer from making any good faith report to any governmental agency or other governmental entity concerning any act or omission that the Officer reasonably believes constitutes a possible violation of federal or state law or making other disclosures that are protected under the anti-retaliation or whistleblower provisions of applicable federal or state law or regulation.

**7. Relief.** The Officer agrees that it would be difficult to measure any damages caused to the Company which might result from any breach by the Officer of this Agreement, and that in any event money damages would be an inadequate remedy for any such breach. Accordingly, the Officer agrees that if the Officer breaches, or proposes to breach, this Agreement, the Company shall be entitled, in addition to all other remedies that it may have, to an injunction or other appropriate equitable relief to restrain any such breach without showing or proving any actual damage to the Company. In addition, in the event the Officer breaches the Confidential Information and Invention Assignment Agreement, effective as of February 8, 2021, by and between the Company and the Officer (“CIIA”), during a period when they are receiving severance payments pursuant to Section 4(b) or (c), the Company shall have the right to suspend or terminate such severance payments. Such suspension or termination shall not limit the Company’s other options with respect to relief for such breach and shall not relieve the Officer of their duties under this Agreement.

**8. Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California, and the parties hereby consent to the jurisdiction of the state and federal courts in the State of California.

**9. Integration.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties concerning such subject matter, including the Prior Agreement, with the sole exception of the CIIA and the Indemnification Agreement, dated February 8, 2021, both by and between the Company and the Officer. If there are any conflicts between the terms and conditions of the CIIA and this Agreement, the terms and conditions of this Agreement shall govern.

**10. Successor to the Officer.** This Agreement shall inure to the benefit of and be enforceable by the Officer’s personal representatives, executors, administrators, heirs, distributees, devisees and legatees. In the event of the Officer’s death after their termination of employment but prior to the completion by the Company of all payments due them under this Agreement, the Company shall continue such payments to the Officer’s beneficiary designated in writing to the Company prior to their death (or to their estate, if the Officer fails to make such designation).

**11. Enforceability.** If any portion or provision of this Agreement (including, without limitation, any portion or provision of any section of this Agreement) shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of this Agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**12. Survival.** The provisions of this Agreement shall survive the termination of this Agreement and/or the termination of the Officer's employment to the extent necessary to effectuate the terms contained herein.

**13. Waiver.** No waiver of any provision hereof shall be effective unless made in writing and signed by the waiving party. The failure of any party to require the performance of any term or obligation of this Agreement, or the waiver by any party of any breach of this Agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

**14. Notices.** Any notices, requests, demands and other communications provided for by this Agreement shall be sufficient if in writing and delivered in person or sent by a nationally recognized overnight courier service or by registered or certified mail, postage prepaid, return receipt requested, to the Officer at the last address the Officer has filed in writing with the Company or, in the case of the Company, at the address set forth above to the President and Chief Executive Officer with a copy to legalnotices@cariboubio.com; provided that if the Officer providing notice is the President and Chief Executive Officer, they are not required to provide notice to themselves but instead shall provide written notice to the Chief Legal Officer.

**15. Amendment.** This Agreement may be amended or modified only by a written instrument signed by the Officer and by a duly authorized representative of the Company.

**16. Successor to Company.** The Company shall require any successor (whether direct or indirect, by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company expressly to assume and agree to perform this Agreement to the same extent that the Company would be required to perform it if no succession had taken place. Failure of the Company to obtain an assumption of this Agreement at or prior to the effectiveness of any succession shall be a material breach of this Agreement.

**17. Counterparts.** This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be taken to be an original; but such counterparts shall together constitute one and the same document.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Caribou Biosciences, Inc.**

**Jason O'Byrne**

By: /s/ Rachel E. Haurwitz  
Name: Rachel E. Haurwitz, Ph.D.  
Title: President and CEO

By: /s/ Jason O'Byrne