

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

FORM 8-K

CURRENT REPORT

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

Date of Report (Date Earliest Event Reported): October 29, 2025

FOXO TECHNOLOGIES INC.

(Exact name of registrant as specified in its charter)

Delaware	001-39783	85-1050265
(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)
477 South Rosemary Avenue Suite 224 West Palm Beach, FL		33401
(Address of Principal Executive Offices)		(Zip Code)

(612) 800-0059
(Registrant's telephone number, including area code)

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

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

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

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A Common Stock, par value \$0.0001	N/A	None

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

Emerging growth company ☒

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

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

On October 29, 2025, FOXO Technologies Inc., a Delaware corporation (the “**Company**”), filed amendments to the Company’s Certificate of Incorporation (the “**Certificate of Incorporation**”), in the form of Amended and Restated Certificates of Designation (the “**Amended Designations**”) of the Company’s previously designated “Series D Cumulative Convertible Redeemable Preferred Stock” (the “**Series D Preferred Stock**”) and the Company’s previously designated “Series E Cumulative Redeemable Secured Preferred Stock” (the “**Series E Preferred Stock**”). The Amended Designation for the Series D Preferred Stock: revises the conversion price to equal the higher of \$0.0001 (such dollar amount not being subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Class A Common Stock) or 90% of the average VWAP of the five trading days immediately prior to the date the Conversion Notice is tendered by the holder. The Amended Designation for the Series E Preferred Stock clarified that dividends are paid semi-annually, not quarterly.

The summary of the rights, privileges and preferences of the Series D Preferred Stock and the Series E Preferred Stock described above is qualified in its entirety by reference to the Amended Designations, copies of which are attached as Exhibits 3.1 and 3.2 to this Current Report on Form 8-K and are incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits.

Exhibit Number	Description of Exhibit
3.1	<u>Amended and Restated Certificate of Designation for Series D Preferred Stock filed with the Delaware Secretary of State on October 29, 2025</u>
3.2	<u>Amended and Restated Certificate of Designation for Series E Preferred Stock filed with the Delaware Secretary of State on October 29, 2025</u>
104	Cover Page Interactive Data File (formatted in Inline XBRL)

SIGNATURES

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

FOXO Technologies Inc.

Date: November 4, 2025

By: /s/ Seamus Lagan
Name: Seamus Lagan
Title: Chief Executive Officer

State of Delaware
 Secretary of State
 Division of Corporations
 Delivered 01:13 PM 10/29/2025
 FILED 01:13 PM 10/29/2025
 SR 20254407372 - File Number 7949696

FOXO TECHNOLOGIES INC.
AMENDED AND RESTATED
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES D CUMULATIVE CONVERTIBLE REDEEMABLE PREFERRED STOCK
 PURSUANT TO SECTION 151 OF THE
 DELAWARE GENERAL CORPORATION LAW

Pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware (the “DGCL”), FOXO Technologies Inc., a corporation organized and existing under the DGCL (hereinafter called the “Company” or “Corporation”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Second Amended and Restated Certificate of Incorporation of the Company (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Certificate”) authorizes the issuance of preferred stock, par value \$0.0001 per share, of the Company in one or more series; and expressly authorizes the Board of Directors of the Company (the “Board” or “Board of Directors”), subject to limitations prescribed by the Requirements of Law, to provide, out of the unissued shares of preferred stock, for series of preferred stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of preferred stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series;

WHEREAS, the Board, pursuant to its authority as aforesaid, designated a series of preferred stock, par value \$0.0001 per share, as the Series D Cumulative Convertible Redeemable Preferred Stock (under and as defined in the Certificate of Designation) (the “Series D Preferred Stock” or the “Preferred Stock”), by resolution dated December 5, 2024;

WHEREAS, the Company, in accordance with Sections 103 and 151 of the DGCL, filed a certificate of designation on December 6, 2024 (the “Certificate of Designation”) with the Secretary of State of the State of Delaware to set the number of shares constituting the Series D Preferred Stock (under and as defined in the Certificate of Designation), and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, the Company, in accordance with Sections 141 and 242 of the DGCL, filed an amendment to the Certificate of Designation on March 31, 2025 with the Secretary of the State of Delaware;

WHEREAS, 4,312 shares of the Company’s Series D Preferred Stock are issued and outstanding as of the date hereof;

WHEREAS, a certificate of amendment (“Certificate of Amendment”) to the Certificate of Designation has been duly adopted and approved by the Board in accordance with the provisions of Sections 141 and 242 of the DGCL;

WHEREAS, the Certificate of Amendment has been duly adopted and approved by the affirmative vote of the Holders of a majority of the then outstanding shares of the Series D Preferred Stock as required by the Certificate of Designation.

NOW THEREFORE, BE IT RESOLVED, that, pursuant to authority conferred upon the Board of Directors by the Certificate, the Board of Directors hereby amends and restates the Certificate of

Designation in its entirety as set forth herein and hereby creates and fixes the series, designations, powers, preferences and other rights, and the qualifications, limitations or restrictions, of the Preferred Stock to be issued hereunder, as follows:

TERMS OF PREFERRED STOCK

Section 1. Definitions. For the purposes hereof, the following terms shall have the following meanings:

"Affiliate" means any Person that, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

"Alternate Consideration" shall have the meaning set forth in Section 8(c).

"Attribution Party" shall have the meaning set forth in Section 6(c).

"Beneficial Ownership Limitation" shall have the meaning set forth in Section 6(c).

"Business Day" means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

"Buy-In" shall have the meaning set forth in Section 6(d)(iv).

"Commission" means the United States Securities and Exchange Commission.

"Common Stock" means the Corporation's Class A common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

"Common Stock Equivalents" means any securities of the Corporation or the Subsidiaries which would entitle the holder thereof to acquire at any time Common Stock, including, without limitation, any debt, preferred stock, rights, options, warrants or other instrument that is at any time convertible into or exercisable or exchangeable for, or otherwise entitles the holder thereof to receive, Common Stock.

"Conversion Amount" means the sum of the Stated Value at issue, plus any accrued and unpaid dividends thereon (whether declared or not declared).

"Conversion Date" shall have the meaning set forth in Section 6(a).

"Conversion Price" shall have the meaning set forth in Section 6(b).

"Conversion Shares" means, collectively, the shares of Common Stock issuable upon conversion of the shares of Preferred Stock in accordance with the terms hereof.

"Distribution" shall have the meaning set forth in Section 8(b).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Fundamental Transaction" shall have the meaning set forth in Section 8(c).

“Holder” shall have the meaning set forth in Section 2.

“Junior Securities” means the Common Stock and all other Common Stock Equivalents of the Corporation other than those securities (i) which are explicitly senior or pari passu to the Preferred Stock, or (ii) to which the Preferred Stock is explicitly junior in dividend rights or liquidation preference.

“Liquidation” shall have the meaning set forth in Section 5.

“Notice of Conversion” shall have the meaning set forth in Section 6(a).

“Original Issue Date” means the date of the first issuance of any shares of the Preferred Stock regardless of the number of transfers of any particular shares of Preferred Stock and regardless of the number of certificates which may be issued to evidence such Preferred Stock.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Purchase Rights” shall have the meaning set forth in Section 8(a).

“Rule 144” means Rule 144 promulgated by the Commission pursuant to the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Senior Securities” means the Series A, B and C Preferred Stock and any other Common Stock Equivalents which are explicitly senior to the Preferred Stock.

“Series D Preferred Stock” means the Corporation’s Series D Cumulative Convertible Redeemable Preferred Stock, par value \$0.0001 per share.

“Share Delivery Date” shall have the meaning set forth in Section 6(d)(ii).

“Stated Value” shall have the meaning set forth in Section 2.

“Stockholder Approval” means such approval as may be required by the applicable rules and regulations of the NYSE American (or any successor entity) from the stockholders of the Corporation with respect to the issuance of the Conversion Shares.

“Subsidiary” means any direct or indirect subsidiary of the Corporation presently existing or formed or acquired after the date hereof.

“Successor Entity” shall have the meaning set forth in Section 8(c).

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the

Nasdaq Global Market, the Nasdaq Global Select Market, the New York Stock Exchange, OTCQB or OTCQX (or any successors to any of the foregoing).

“Transfer Agent” means Continental Stock Transfer & Trust Company, the current transfer agent of the Corporation with a mailing address of 1 State Street, 30th Floor, New York, NY 10004, and any successor transfer agent of the Corporation.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Stock is then listed or quoted on a Trading Market, the daily volume weighted average price of the Common Stock for such date (or the nearest preceding date) on the Trading Market on which the Common Stock is then listed or quoted as reported by Bloomberg L.P. (based on a Trading Day from 9:30 a.m. (New York City time) to 4:02 p.m. (New York City time)), (b) if OTCQB or OTCQX is not a Trading Market, the volume weighted average price of the Common Stock for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (c) if the Common Stock is not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Stock are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per share of the Common Stock so reported, or (d) in all other cases, the fair market value of a share of Common Stock as determined by an independent appraiser selected in good faith by the Holders of a majority in interest of the Preferred Stock then outstanding and reasonably acceptable to the Corporation, the fees and expenses of which shall be paid by the Corporation.

Section 2. Designation, Amount and Par Value. The series of preferred stock shall be designated as its Series D Cumulative Convertible Redeemable Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 10,000 (which shall not be subject to increase without the affirmative vote of the holders of a majority of the then outstanding Preferred Stock (each, a “Holder” and collectively, the “Holders”)) pursuant to Section 4. Each share of Preferred Stock shall have a par value of \$0.0001 and a stated value equal to \$1,000.00 (the “Stated Value”).

Section 3. Dividends. Holders of shares of the Preferred Stock are not entitled to receive dividends.

Section 4. Voting Rights.

(a) The Corporation shall not, without the approval of the Holders of a majority of the then outstanding shares of the Preferred Stock:

(i) Alter or change adversely the powers, preferences or rights given to the Preferred Stock or alter or amend this Certificate of Designation;

(ii) Amend its Certificate of Incorporation or other charter documents in any manner that adversely affects any rights of the Holders;

(iii) Increase the number of authorized shares of Preferred Stock; or

(iv) Enter into any agreement with respect to any of the foregoing.

(b) Except for the approvals above, the Holders of Preferred Stock shall have no voting rights.

Section 5. Liquidation. Upon any liquidation, dissolution or winding-up of the Corporation, whether voluntary or involuntary (a “Liquidation”), after any payments due with regard to any Senior

Securities, the remaining assets, whether capital or surplus, of the Corporation shall be distributed to the holders of the Preferred Stock and the other Common Stock Equivalents, pro rata based on the number of shares held by such holder, treating for this purpose all such securities as if they had been converted to Common Stock pursuant to the terms thereof (without giving effect to the Beneficial Ownership Limitation and presuming for the purposes hereof, that all conditions to the convertibility of all such shares had been satisfied) prior to such Liquidation.

Section 6. Conversion.

(a) Conversions at Option of Holder. Each share of Preferred Stock shall be convertible, at any time and from time to time from and after the Original Issue Date at the option of the Holder thereof, into that number of shares of Common Stock determined by dividing the Stated Value of such share of Preferred Stock, plus any accrued declared and unpaid dividends thereon by the Conversion Price. Holders shall effect conversions by providing the Corporation with the form of conversion notice attached hereto as Annex A (a "Notice of Conversion"). Each Notice of Conversion shall specify the number of shares of Preferred Stock to be converted, the number of shares of Preferred Stock owned prior to the conversion at issue, the number of shares of Preferred Stock owned subsequent to the conversion at issue and the date on which such conversion is to be effected, which date may not be prior to the date the applicable Holder delivers by facsimile such Notice of Conversion to the Corporation (such date, the "Conversion Date"). If no Conversion Date is specified in a Notice of Conversion, the Conversion Date shall be the date that such Notice of Conversion to the Corporation is deemed delivered hereunder. No ink-original Notice of Conversion shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Conversion form be required. The calculations and entries set forth in the Notice of Conversion shall control in the absence of manifest or mathematical error. To effect conversions of shares of Preferred Stock, a Holder shall not be required to surrender the certificate(s) representing the shares of Preferred Stock to the Corporation unless all of the shares of Preferred Stock represented thereby are so converted, in which case such Holder shall deliver the certificate representing such shares of Preferred Stock promptly following the Conversion Date at issue. Upon delivery of the Notice of Conversion, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Conversion Shares with respect to which the applicable Preferred Stock is being converted, irrespective of the actual date of delivery of the Conversion Shares. Shares of Preferred Stock converted into Common Stock or redeemed in accordance with the terms hereof shall be canceled and shall not be reissued.

(b) Conversion Price. The conversion price for the Preferred Stock shall equal higher of \$0.0001 (such dollar amount *not* being subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock) or 90% of the average of the VWAP for the five Trading Days immediately prior to the Conversion Date (the "Conversion Price").

(c) Beneficial Ownership Limitation. Notwithstanding anything herein to the contrary, the Corporation shall not effect any conversion of the Preferred Stock, and a Holder shall not have the right to convert any portion of the Preferred Stock, other than upon a mandatory conversion pursuant to Section 6(c), to the extent that, after giving effect to an attempted conversion set forth on an applicable Notice of Conversion, such Holder (together with such Holder's Affiliates, and any other Person whose beneficial ownership of Common Stock would be aggregated with the Holder's for purposes of Section 13(d) or Section 16 of the Exchange Act and the applicable regulations of the Commission, including any "group" of which the Holder is a member (the foregoing, "Attribution Parties") would beneficially own a number of shares of Common Stock in excess of the Beneficial Ownership Limitation (as defined below). For purposes of the foregoing sentence, the number of shares of Common Stock beneficially owned by such Holder and its Attribution Parties shall include the number of shares of Common Stock issuable upon conversion of the Preferred Stock subject to the Notice of Conversion with respect to which such

determination is being made, but shall exclude the number of shares of Common Stock which are issuable upon (A) conversion of the remaining, unconverted Preferred Stock beneficially owned by such Holder or any of its Attribution Parties, and (B) exercise or conversion of the unexercised or unconverted portion of any other securities of the Corporation (including any warrants) beneficially owned by such Holder or any of its Attribution Parties that are subject to a limitation on conversion or exercise similar to the limitation contained herein. Except as set forth in the preceding sentence, for purposes of this Section, beneficial ownership shall be calculated in accordance with Section 13(d) of the Exchange Act and the applicable regulations of the Commission. In addition, for purposes hereof, “group” has the meaning set forth in Section 13(d) of the Exchange Act and the applicable regulations of the Commission. To the extent that the limitation contained in this Section 6(c) applies, the determination of whether the Preferred Stock is convertible (in relation to other securities owned by such Holder together with any Attribution Parties) and of how many shares of Preferred Stock are convertible shall be in the sole discretion of such Holder, and the submission of a Notice of Conversion shall be deemed to be such Holder’s determination of whether the shares of Preferred Stock may be converted (in relation to other securities owned by such Holder together with any Attribution Parties) and how many shares of the Preferred Stock are convertible, in each case subject to the Beneficial Ownership Limitation. To ensure compliance with this restriction, each Holder will be deemed to represent to the Corporation each time it delivers a Notice of Conversion that such Notice of Conversion has not violated the restrictions set forth in this paragraph and the Corporation shall have no obligation to verify or confirm the accuracy of such determination. For purposes of this Section, in determining the number of outstanding shares of Common Stock, a Holder may rely on the number of outstanding shares of Common Stock as stated in the most recent of the following: (A) the Corporation’s most recent periodic or annual filing with the Commission, as the case may be, (B) a more recent public announcement by the Corporation that is filed with the Commission, or (C) a more recent notice by the Corporation or the Transfer Agent to the Holder setting forth the number of shares of Common Stock then outstanding. Upon the written request of a Holder (which may be by email), the Corporation shall, within three (3) Trading Days thereof, confirm in writing to such Holder (which may be via email) the number of shares of Common Stock then outstanding. In any case, the number of outstanding shares of Common Stock shall be determined after giving effect to any actual conversion or exercise of securities of the Corporation, including shares of Preferred Stock, by such Holder or its Attribution Parties since the date as of which such number of outstanding shares of Common Stock was last publicly reported or confirmed to the Holder. The “Beneficial Ownership Limitation” shall initially be 4.99% (or upon the election by a Holder prior to the original issuance by the Corporation of any shares of Preferred Stock to such Holder, 19.99%) of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock issuable upon conversion of Preferred Stock held by the applicable Holder. A Holder, upon notice to the Corporation, may increase or decrease the Beneficial Ownership Limitation provisions of this Section 6(c) applicable to its Preferred Stock provided that the Beneficial Ownership Limitation in no event exceeds 19.99% of the number of shares of the Common Stock outstanding immediately after giving effect to the issuance of shares of Common Stock upon conversion of this Preferred Stock held by the Holder and the provisions of this Section 6(c) shall continue to apply. Any such increase in the Beneficial Ownership Limitation will not be effective until the 61st day after such notice is delivered to the Corporation and shall only apply to such Holder and no other Holder. The provisions of this paragraph shall be construed and implemented in a manner otherwise than in strict conformity with the terms of this Section 6(c) to correct this paragraph (or any portion hereof) which may be defective or inconsistent with the intended Beneficial Ownership Limitation contained herein or to make changes or supplements necessary or desirable to properly give effect to such limitation. The limitations contained in this paragraph shall apply to a successor holder of Preferred Stock.

(d) Mechanics of Conversion.

(i) Delivery of Conversion Shares Upon Conversion. Not later than the earlier of (i) one (1) Trading Day, and (ii) the number of Trading Days comprising the Standard Settlement Period

(as defined below) after each Conversion Date (the “Share Delivery Date”), the Corporation shall deliver, or cause to be delivered, to the converting Holder the number of Conversion Shares being acquired upon the conversion of the Preferred Stock. In compliance with the foregoing sentence, the Corporation shall deliver the Conversion Shares required to be delivered by the Corporation under this Section 6 electronically through the Depository Trust Company or another established clearing corporation performing similar functions. As used herein, “Standard Settlement Period” means the standard settlement period, expressed in a number of Trading Days, on the Corporation’s primary Trading Market with respect to the Common Stock as in effect on the date of delivery of the Notice of Conversion.

(ii) Failure to Deliver Conversion Shares. If, in the case of any Notice of Conversion, such Conversion Shares are not delivered to or as directed by the applicable Holder by the Share Delivery Date, the Holder shall be entitled to elect by written notice to the Corporation at any time on or before its receipt of such Conversion Shares, to rescind such Conversion, in which event the Corporation shall promptly return to the Holder any original Preferred Stock certificate delivered to the Corporation and the Holder shall promptly return to the Corporation the Conversion Shares issued to such Holder pursuant to the rescinded Notice of Conversion.

(iii) Obligation Absolute; Partial Liquidated Damages. The Corporation’s obligation to issue and deliver the Conversion Shares upon conversion of Preferred Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares; provided, however, that such delivery shall not operate as a waiver by the Corporation of any such action that the Corporation may have against such Holder. In the event a Holder shall elect to convert any or all of its Preferred Stock, the Corporation may not refuse conversion based on any claim that such Holder or any one associated or affiliated with such Holder has been engaged in any violation of law or agreement or for any other reason, unless an injunction from a court, on notice to Holder, restraining and/or enjoining conversion of all or part of the Preferred Stock of such Holder shall have been sought and obtained, and the Corporation posts a surety bond for the benefit of such Holder in the amount of 150% of the Stated Value of Preferred Stock which is subject to the injunction, which bond shall remain in effect until the completion of arbitration/litigation of the underlying dispute and the proceeds of which shall be payable to such Holder to the extent it obtains judgment. In the absence of such injunction, the Corporation shall issue Conversion Shares and, if applicable, cash, upon a properly noticed conversion. If the Corporation fails to deliver to a Holder such Conversion Shares pursuant to Section 6(d)(i) by the Share Delivery Date applicable to such conversion, the Corporation shall pay to such Holder, in cash, as liquidated damages and not as a penalty, for each \$5,000 of Stated Value of Preferred Stock being converted, \$50 per Trading Day (increasing to \$100 per Trading Day on the third Trading Day and increasing to \$200 per Trading Day on the sixth Trading Day after such damages begin to accrue) for each Trading Day after the Share Delivery Date until such Conversion Shares are delivered or Holder rescinds such conversion. Nothing herein shall limit a Holder’s right to pursue actual damages hereof for the Corporation’s failure to deliver Conversion Shares within the period specified herein and such Holder shall have the right to pursue all remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief. The exercise of any such rights shall not prohibit a Holder from seeking to enforce damages pursuant to any other Section hereof or under applicable law.

(iv) Compensation for Buy-In on Failure to Timely Deliver Conversion Shares Upon Conversion. In addition to any other rights available to the Holder, if the Corporation fails for any

reason to deliver to a Holder the applicable Conversion Shares by the Share Delivery Date pursuant to Section 6(d)(i), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "Buy-In"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount, if any, by which (x) such Holder's total purchase price (including any brokerage commissions) for the Common Stock so purchased exceeds (y) the product of (1) the aggregate number of shares of Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Preferred Stock equal to the number of shares of Preferred Stock submitted for conversion (in which case, such conversion shall be deemed rescinded) or deliver to such Holder the number of shares of Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6(d)(i). For example, if a Holder purchases shares of Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Preferred Stock with respect to which the actual sale price of the Conversion Shares (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice indicating the amounts payable to such Holder in respect of the Buy-In and, upon request of the Corporation, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver the Conversion Shares upon conversion of the shares of Preferred Stock as required pursuant to the terms hereof.

(v) Reservation of Shares. The Corporation covenants that it will take all corporate actions necessary to reserve and keep available out of its authorized and unissued shares of Common Stock for the sole purpose of issuance upon conversion of the Preferred Stock, each as herein provided, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holder (and the other holders of the Preferred Stock), not less than such aggregate number of shares of the Common Stock as shall be issuable (taking into account the adjustments and restrictions of Section 8(c)) upon the conversion of the then outstanding shares of Preferred Stock. The Corporation covenants that all shares of Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and nonassessable.

(vi) Fractional Shares. No fractional shares or scrip representing fractional shares shall be issued upon the conversion of the Preferred Stock. As to any fraction of a share which the Holder would otherwise be entitled to receive upon such conversion, the Corporation shall at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Conversion Price or round up to the next whole share.

(vii) Transfer Taxes and Expenses. The issuance of Conversion Shares on conversion of this Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such Conversion Shares, provided that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such Conversion Shares upon conversion in a name other than that of the Holders of such shares of Preferred Stock and the Corporation shall not be required to issue or deliver such Conversion Shares unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid. The Corporation shall pay all Transfer Agent fees required for

same-day processing of any Notice of Conversion and all fees to the Depository Trust Company (or another established clearing corporation performing similar functions) required for same-day electronic delivery of the Conversion Shares.

(e) Issuance Restrictions. Notwithstanding anything herein to the contrary, if the Corporation has not obtained the approval of NYSE American for the issuance of any shares of Common Stock issuable upon the conversion of Preferred Stock, no shares of Common Stock shall be issued. In addition, notwithstanding anything herein to the contrary, if the Corporation has not obtained Stockholder Approval, then the Corporation may not issue upon the conversion of any shares of the Preferred Stock a number of shares of Common Stock which, when aggregated with any shares of Common Stock issued upon the conversion of any other shares of Preferred Stock would exceed 19.99% of the Common Stock at the date of issuance of the Preferred Stock subject to adjustment for reverse and forward stock splits, stock dividends, stock combinations and other similar transactions of the Common Stock that occur after the Original Issue Date (such number of shares, the "Issuable Maximum"). Each Capped Holder shall be entitled to a portion of the Issuable Maximum equal to the quotient obtained by dividing (a) the aggregate Stated Value of such Holder's Preferred Stock (b) the aggregate Stated Value of all shares of Preferred Stock issued by the Corporation. In addition, a Capped Holder may allocate its pro-rata portion of the Issuable Maximum among Issuance Capped Securities held by it in its sole discretion. Such portion shall be adjusted upward ratably in the event a Capped Holder no longer owns any Issuance Capped Securities and the amount of Issuance Capped Securities issued to such Capped Holder was less than such Capped Holder's pro-rata share of the Issuable Maximum.

Section 7. [Reserved].

Section 8. Certain Adjustments.

(a) Subsequent Rights Offerings. If at any time the Corporation grants, issues or sells any Common Stock Equivalents or rights to purchase stock, warrants, securities or other property pro rata to the record holders of any class of shares of Common Stock (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of shares of Common Stock acquirable upon complete conversion of such Holder's Preferred Stock (without regard to any limitations on conversion hereof, including, without limitation, the Beneficial Ownership Limitation and presuming, for the purposes hereof, that all conditions to the convertibility of all such shares had been satisfied) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the grant, issue or sale of such Purchase Rights (provided, however, to the extent that the Holder's rights to participate in any such Purchase Right would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Purchase Right (or beneficial ownership of such shares of Common Stock as a result of such Purchase Right to such extent) and such Purchase Right to such extent shall be held in abeyance for the Holder until such time, if ever, as its rights thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(b) Pro Rata Distributions. During such time as this Preferred Stock is outstanding, if the Corporation declares or makes any dividend or other distribution of its assets (or rights to acquire its assets) to holders of shares of Common Stock, by way of return of capital or otherwise (including, without limitation, any distribution of cash, stock or other securities, property or options by way of a dividend, spin off, reclassification, corporate rearrangement, scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Preferred Stock, then, in each such case, the Holder shall be entitled to participate in such Distribution to the same extent that the Holder would have participated therein if the Holder had held the number of shares of Common Stock acquirable upon complete

conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including, without limitation, the Beneficial Ownership Limitation and presuming, for the purposes hereof, that all conditions to the convertibility of all such shares had been satisfied) immediately before the date of which a record is taken for such Distribution, or, if no such record is taken, the date as of which the record holders of shares of Common Stock are to be determined for the participation in such Distribution (provided, however, to the extent that the Holder's right to participate in any such Distribution would result in the Holder exceeding the Beneficial Ownership Limitation, then the Holder shall not be entitled to participate in such Distribution to such extent (or in the beneficial ownership of any shares of Common Stock as a result of such Distribution to such extent) and the portion of such Distribution shall be held in abeyance for the benefit of the Holder until such time, if ever, as its right thereto would not result in the Holder exceeding the Beneficial Ownership Limitation).

(c) Fundamental Transaction. If, at any time while this Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions effects any merger or consolidation of the Corporation with or into another Person, (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which holders of Common Stock are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Stock, (iv) the Corporation, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Stock or any compulsory share exchange pursuant to which the Common Stock is effectively converted into or exchanged for other securities, cash or property, or (v) the Corporation, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off or scheme of arrangement) with another Person whereby such other Person acquires more than 50% of the outstanding shares of Common Stock (not including any shares of Common Stock held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a "Fundamental Transaction"), then, upon any subsequent conversion of this Preferred Stock (without regard to any limitations on conversion hereof including, without limitation, the Beneficial Ownership Limitation), the Holder shall have the right to receive, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction, the number of shares of Common Stock of the successor or acquiring corporation or of the Corporation, if it is the surviving corporation, and any additional consideration (the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of shares of Common Stock for which this Preferred Stock is convertible immediately prior to such Fundamental Transaction (without regard to any limitations on conversion hereof including, without limitation, the Beneficial Ownership Limitation). For purposes of any such conversion, the determination of the Conversion Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Common Stock in such Fundamental Transaction, and the Corporation shall apportion the Conversion Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new Certificate of Designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume

in writing all of the obligations of the Corporation under this Certificate of Designation in accordance with the provisions of this Section 8(c) pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Transaction and shall, at the option of the Holder of this Preferred Stock, deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock which is convertible for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Preferred Stock (without regard to any limitations on conversion hereof, including, without limitation, the Beneficial Ownership Limitation) prior to such Fundamental Transaction, and with a conversion price which applies the conversion price hereunder to such shares of capital stock (but taking into account the relative value of the shares of Common Stock pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such conversion price being for the purpose of protecting the economic value of this Preferred Stock immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein.

(d) Calculations. All calculations under this Section 8 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 8, the number of shares of Common Stock deemed to be issued and outstanding as of a given date shall be the sum of the number of shares of Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

(e) Notice to the Holders. If (A) the Corporation shall declare a dividend (or any other distribution in whatever form) on the Common Stock, (B) the Corporation shall declare a special nonrecurring cash dividend on or a redemption of the Common Stock, (C) the Corporation shall authorize the granting to all holders of the Common Stock of rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any stockholders of the Corporation shall be required in connection with any reclassification of the Common Stock, any consolidation or merger to which the Corporation is a party, any sale or transfer of all or substantially all of the assets of the Corporation, or any compulsory share exchange whereby the Common Stock is converted into other securities, cash or property or (E) the Corporation shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Corporation, then, in each case, the Corporation shall cause to be filed at each office or agency maintained for the purpose of conversion of this Preferred Stock, and shall cause to be delivered by email or nationally recognized overnight courier service to each Holder at its last email address or address as it shall appear upon the stock books of the Corporation, at least twenty (20) calendar days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Stock of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Stock of record shall be entitled to exchange their shares of the Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer or share exchange, provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided hereunder constitutes, or contains, material, non-public information regarding the Corporation or any of the Subsidiaries, the Corporation shall simultaneously file such notice with the Commission pursuant to a

Current Report on Form 8-K. The Holder shall remain entitled to convert the Conversion Amount of this Preferred Stock (or any part hereof) during the 20-day period commencing on the date of such notice through the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 9. Redemption.

(a) Corporation Optional Redemption. At any time, the Corporation shall have the right but not have any obligation to redeem all, or any part, of the Preferred Stock then outstanding. The Preferred Stock subject to redemption pursuant to this Section 9(a) shall be redeemed by the Corporation in cash in an amount equal to the Stated Value of the shares of Preferred Stock being redeemed plus all accrued and unpaid dividends thereon (whether declared or not declared). The Corporation may exercise its right to require redemption under this Section 9(a) by delivering a written notice thereof to all the Holders. Each redemption notice shall be irrevocable. The notice shall (x) state the date on which the redemption shall occur, which shall not be less than five (5) Trading Days nor more than twenty (20) Trading Days following the delivery of the notice and (y) state the number of shares of Preferred Stock being redeemed from each Holder. A Holder may still convert any shares of Preferred Stock to be redeemed after the receipt of any redemption notice until the applicable redemption date except as may otherwise be expressly set forth herein.

(b) Mechanics of Redemption. The Corporation shall deliver the applicable redemption prices to each Holder in cash on the applicable redemption date. In the event of redemption of less than all of the Preferred Stock, the Corporation shall deliver to each Holder a new certificate representing the shares of Preferred Stock which have not been redeemed. If the Corporation does not pay the applicable redemption price to a Holder, such Holder, at its option, may deliver notice to the Corporation that the redemption of its shares for which it has not been paid shall be null and void.

Section 10. Ranking. With respect to dividends or a Liquidation, the Preferred Stock shall rank junior to all other Senior Securities.

Section 11. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder including, without limitation, any Notice of Conversion, shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address of its principal executive offices, Attention: Mark White, email address mwhite@foxotechnologies.com, or such other e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by e-mail, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any Trading Day, (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via e-mail at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

(c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the Preferred Stock or this Certificate of Designation (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment or other obligation shall be made or performed on the next succeeding Business Day.

(g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) Status of Converted or Redeemed Preferred Stock. If any shares of Preferred Stock shall be converted, redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series D Cumulative Convertible Redeemable Preferred Stock.

RESOLVED, FURTHER, that the Chief Executive Officer, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

[Signature on the Following Page]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series D Cumulative Convertible Redeemable Preferred Stock to be signed and attested this 29th day of October 2025.

FOXO TECHNOLOGIES INC.

Seamus Lagan

Seamus Lagan
Chief Executive Officer

ANNEX A
NOTICE OF CONVERSION

(To be executed by the Registered Holder in order to convert shares of Preferred Stock)

The undersigned hereby elects to convert the number of shares of Series D Cumulative Convertible Redeemable Preferred Stock indicated below into shares of common stock, par value \$0.0001 per share (the "Common Stock"), of FOXO Technologies Inc., a Delaware corporation (the "Corporation"), according to the conditions hereof, as of the date written below. If shares of Common Stock are to be issued in the name of a Person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto and is delivering herewith such certificates and opinions as may be required by the Corporation. No fee will be charged to the Holders for any conversion, except for any such transfer taxes.

Conversion calculations:

Date to Effect Conversion: _____
Number of shares of Preferred Stock owned prior to Conversion: _____
Number of shares of Preferred Stock to be Converted: _____
Stated Value of shares of Preferred Stock to be Converted: _____
Amount of accrued and unpaid dividends (whether declared or not declared): _____
Number of shares of Common Stock to be Issued: _____
Applicable Conversion Price: _____
Number of shares of Preferred Stock owned subsequent to Conversion: _____
Address for Delivery: _____

Or

DWAC Instructions:

Broker no: _____
Account no: _____

[HOLDER]

By: _____
Name: _____
Title: _____

State of Delaware
 Secretary of State
 Division of Corporations
 Delivered 07:36 PM 10/29/2025
 FILED 07:36 PM 10/29/2025
 SR 20254414306 - File Number 7949696

FOXO TECHNOLOGIES INC.
AMENDED AND RESTATED
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES E CUMULATIVE REDEEMABLE SECURED PREFERRED STOCK
 PURSUANT TO SECTION 151 OF THE
 DELAWARE GENERAL CORPORATION LAW

Pursuant to the provisions of Section 151 of the General Corporation Law of the State of Delaware (the “DGCL”), FOXO Technologies Inc., a corporation organized and existing under the DGCL (hereinafter called the “Company” or “Corporation”), in accordance with the provisions of Section 103 thereof, does hereby submit the following:

WHEREAS, the Second Amended and Restated Certificate of Incorporation of the Company (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Certificate”) authorizes the issuance of preferred stock, par value \$0.0001 per share, of the Company in one or more series; and expressly authorizes the Board of Directors of the Company (the “Board” or “Board of Directors”), subject to limitations prescribed by the Requirements of Law, to provide, out of the unissued shares of preferred stock, for series of preferred stock, and, with respect to each such series, to establish and fix the number of shares to be included in any series of preferred stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series;

WHEREAS, the Board, pursuant to its authority as aforesaid, designated a series of preferred stock, par value \$0.0001 per share, as the Series E Cumulative Redeemable Secured Preferred Stock (under and as defined in the Certificate of Designation) (the “Series E Preferred Stock” or the “Preferred Stock”), by resolution dated June 12, 2025;

WHEREAS, the Company, in accordance with Sections 103 and 151 of the DGCL, filed a certificate of designation on June 25, 2025 (the “Certificate of Designation”) with the Secretary of State of the State of Delaware to set the number of shares constituting the Series E Preferred Stock (under and as defined in the Certificate of Designation), and the voting powers, designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations and restrictions thereof;

WHEREAS, 60,000 shares of the Company’s Series E Preferred Stock are issued and outstanding as of the date hereof;

WHEREAS, a certificate of amendment (“Certificate of Amendment”) to the Certificate of Designation has been duly adopted and approved by the Board in accordance with the provisions of Sections 141 and 242 of the DGCL;

NOW THEREFORE, BE IT RESOLVED, that, pursuant to authority conferred upon the Board of Directors by the Certificate, the Board of Directors hereby amends and restates the Certificate of Designation in its entirety as set forth herein and hereby creates and fixes the series, designations, powers, preferences and other rights, and the qualifications, limitations or restrictions, of the Preferred Stock to be issued hereunder, as follows:

TERMS OF PREFERRED STOCK

Section 1. **Definitions.** For the purposes hereof, the following terms shall have the following meanings:

“Affiliate” means any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with a Person, as such terms are used in and construed under Rule 405 of the Securities Act.

“Business Day” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“Common Stock” means the Corporation’s Class A Common Stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Daily VWAP” means, for any Trading Day, the per share volume-weighted average price of the Common Stock as displayed under the heading “Bloomberg VWAP” (or, if such source is not available, its equivalent successor market source) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day. The Daily VWAP will be determined without regard to after-hours trading or any other trading outside of the regular trading session.

“Dividend Payment Date” shall have the meaning set forth in Section 3(A).

“Dividend Periods” means semi-annual dividend periods commencing on January 1 and July 1, of each year and ending on and including the day preceding the first day of the next succeeding Dividend Period (other than the initial Dividend Period, which shall be deemed to have commenced on and include December 31, 2025 and shall end on and include the day preceding the first day of the next succeeding Dividend Period); provided, that, any Dividend Period during which any Preferred Stock shall be redeemed pursuant to Section 10 shall end on the redemption date only with respect to the Preferred Stock being redeemed.

“Dividend Rate” means 2.5% per annum.

“Dividend Record Date” shall have the meaning set forth in Section 3(A).

“Fundamental Transaction” shall have the meaning set forth in Section 8.

“Holder” shall have the meaning set forth in Section 2.

“Junior Securities” means the Common Stock and any other class or series of stock of the Corporation now or hereafter issued and outstanding as to which the Preferred Stock has preference or priority in the payment of dividends and as to the distribution of assets upon liquidation, dissolution or winding up.

“Liquidation Payment” shall have the meaning set forth in Section 6(a),

“New York Courts” shall have the meaning set forth in Section 11(c).

“Parity Securities” means any class or series of stock of the Corporation now or hereafter issued and outstanding as to which the holders of the Preferred Stock and holders of such other class or series shall be entitled to the receipt of dividends and of amounts distributable upon liquidation, dissolution or winding up in proportion to their respective amounts of accrued and unpaid dividends per share or liquidation preferences, without preference or priority, one over the other.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or any other entity of any kind.

“Preferred Stock” shall have the meaning set forth in Section 2.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“Senior Securities” means any class or series of stock of the Corporation now or hereafter issued and outstanding as to which the holders of such class or series shall be entitled to the receipt of dividends or of amounts distributable upon liquidation, dissolution or winding up in preference or priority to the Holders.

“Stock Dividend” shall have the meaning set forth in Section 3(B).

“Stock Dividend Rate” means 5.0% per annum.

“Stock Dividend Stock Price” for any Stock Dividend means the average of the Daily VWAP per share of the Common Stock for the five Trading Days preceding the Dividend Payment Date for such Stock Dividend.

“Subsidiary” means any direct or indirect subsidiary of the Corporation presently existing or formed or acquired after the date hereof.

“Successor Entity” shall have the meaning set forth in Section 8.

“Trading Day” means any day on which trading in the Common Stock generally occurs on the principal U.S. national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not then listed on a U.S. national or regional securities exchange, on the principal other market on which the Common Stock is then traded.

Section 2. **Designation, Amount and Par Value.** The series of preferred stock shall be designated as its Series E Cumulative Redeemable Secured Preferred Stock (the “Preferred Stock”) and the number of shares so designated shall be up to 4,000,000 (which shall not be subject to increase without the affirmative vote of the holders of a majority of the then outstanding Preferred Stock (each, a “Holder” and, collectively, the “Holders”) pursuant to Section 4. Each share of Preferred Stock shall have a par value of \$0.0001 and a stated value equal to \$25.00 (the “Stated Value”).

Section 3. **Dividends.**

(A) Cash Dividends

(a) Holders of issued and outstanding shares of Preferred Stock shall be entitled to receive, when and as declared by the Board of Directors out of funds legally available for the

payment of distributions, cumulative preferential cash dividends at a rate per annum equal to the Dividend Rate of the \$25.00 per share stated liquidation preference of the Preferred Stock. Such dividends shall accrue and accumulate on each issued and outstanding share of the Preferred Stock on a daily basis from the original date of issuance of such shares and shall be payable semi-annually in equal amounts in arrears on the last calendar day of each Dividend Period (each such day being hereinafter called a "Dividend Payment Date"); provided, that, if any Dividend Payment Date is not a Business Day, then the dividend that would otherwise have been payable on such Dividend Payment Date may be paid on the next succeeding Business Day with the same force and effect as if paid on such Dividend Payment Date, and no interest or additional dividends or other sums shall accrue on the amount so payable from such Dividend Payment Date to such succeeding Business Day. Any cash dividend payable on the Preferred Stock for any partial Dividend Period shall be prorated and computed on the basis of a 360-day year consisting of twelve 30-day months. Dividends shall be payable to Holders of record as they appear in the stock records of the Corporation at the close of business on the applicable record date, which shall be the tenth day preceding the applicable Dividend Payment Date, or such other date designated by the Board of Directors or an officer of the Corporation duly authorized by the Board of Directors for the payment of dividends that is not more than 30 nor less than ten days prior to such Dividend Payment Date (each such date, a "Dividend Record Date").

(b) No cash dividend under this Section 3(A) on shares of Preferred Stock shall be declared by the Board of Directors or paid or set apart for payment by the Corporation at such time as the terms and provisions of Senior Securities (including if any accrued dividends (whether declared or not declared) thereon have not been paid) or any agreement of the Corporation (whether now existing or arising hereafter), including any agreement relating to its indebtedness, prohibits such declaration, payment or setting apart for payment or provide that such declaration, payment or setting apart for payment would constitute a breach thereof or a default thereunder, or if such declaration, payment or setting aside of funds is restricted or prohibited by law; provided, that, notwithstanding anything to the contrary contained herein, cash dividends on the Preferred Stock shall continue to accrue and accumulate regardless of whether (i) any or all of the foregoing restrictions exist; (ii) the Corporation has earnings or profits; (iii) there are funds legally available for the payment of such dividends; or (iv) such dividends are declared by the Board of Directors. Accrued and unpaid cash dividends on the Preferred Stock will accumulate as of the Dividend Payment Date on which they first become payable or on the date of redemption of the Preferred Stock, as the case may be.

(c) Except as provided in the next sentence, if any Preferred Stock is outstanding, no dividends (other than in shares of Common Stock or Junior Securities ranking junior to the Preferred Stock as to dividends and upon liquidation, dissolution or winding up) will be declared or paid or set aside for payment on any Parity Securities or Junior Securities, unless all accumulated or unpaid cash dividends are contemporaneously declared and paid in cash or declared and a sum of cash sufficient for the payment thereof set apart for such payment on the Preferred Stock for all past Dividend Periods with respect to which full dividends were not paid on the Preferred Stock. When cash dividends are not paid in full (or a sum sufficient for such full payment is not set apart for payment) upon the Preferred Stock and upon all Parity Securities, all cash dividends declared, paid or set apart for payment upon the Preferred Stock and all such Parity Securities shall be declared and paid pro rata or declared and set apart for payment pro rata, so that the amount of cash dividends declared per share on the Preferred Stock and per share on such Parity Securities (which shall not include any accumulation in respect of unpaid cash dividends for prior dividend periods if such other Parity Securities do not bear cumulative dividends) bear to each other. No interest, or sum of money in lieu of interest, shall be payable in respect of any cash dividend payment or payments on the Preferred Stock which may be in arrears.

(d) Except as provided in this clause (d), unless all accumulated accrued and unpaid cash dividends on the Preferred Stock are contemporaneously declared and paid in cash or declared

and a sum of cash sufficient for the payment thereof is set apart for payment for all past Dividend Periods with respect to which full cash dividends were not paid on the Preferred Stock, no dividends (other than in shares of Common Stock or Junior Securities ranking junior to the Preferred Stock as to dividends and upon liquidation, dissolution or winding up) may be declared or paid or set apart for payment upon the Common Stock or any Junior Securities or Parity Securities, nor shall any Common Stock, Junior Securities or Parity Securities be redeemed, purchased or otherwise acquired directly or indirectly for any consideration (or any monies be paid or made available for a sinking fund for the redemption of any such stock) by the Corporation (except for conversion into or exchange for Junior Securities or by redemption, purchase or acquisition of stock under any employee benefit plan of the Corporation).

(e) Holders of Preferred Stock shall not be entitled to any cash dividend in excess of all accumulated accrued or unpaid cash dividends on the Preferred Stock as described in this Section 3(A). Any cash dividend payment made on the Preferred Stock shall first be credited against the earliest accumulated accrued and unpaid dividend with respect to such shares which remains payable at the time of such payment.

(B) Stock Dividends

(a) In addition to the cash dividends payable pursuant to Section 3(A), Holders of issued and outstanding Preferred Stock shall be entitled to receive dividends payable in shares of Common Stock at a rate per annum equal to the Stock Dividend Rate of the \$25.00 per share liquidation preference of the Preferred Stock (each a "Stock Dividend"). The Stock Dividend shall be paid on the same day, and to the same Holders, as the cash dividend.

(b) The number of shares of Common Stock payable in respect of any Stock Dividend will be equal to (x) the dollar amount of such Stock Dividend, divided by (y) the Stock Dividend Stock Price for such Stock Dividend.

(c) At the Corporation's option, in connection with any Stock Dividend, in lieu of delivering any fractional share of Common Stock, the Corporation may pay cash for such fractional share (to the extent it is not otherwise prohibited from doing so), based on the applicable Stock Dividend Stock Price, or round up such fractional share to the nearest whole share of Common Stock for each Holder.

(d) Any shares of Common Stock issued in connection with a Stock Dividend, when issued, will be deemed registered in the name of the Holder as of the close of business on the Dividend Record Date.

(e) If, in the Corporation's reasonable judgment, the issuance of shares of Common Stock as payment of any Stock Dividend, or the resale of those shares by Holders or beneficial owners that are not and have not at any time during the preceding three months been, an Affiliate of the Corporation, requires registration under the Securities Act, then the Corporation will use its commercially reasonable efforts to:

(i) file and cause to become effective under the Securities Act a registration statement covering such issuance or covering such resales from time to time, pursuant to Rule 415 under the Securities Act (or any successor rule) by such Holders and beneficial owners, as applicable;

(ii) in the case of a resale registration statement, keep such registration statement effective under the Securities Act, and provide a prospectus that may be used in connection therewith, until all such shares are resold pursuant to such registration statement or are, or would be, eligible for resale without registration, pursuant to Rule 144 under the Securities Act (or any successor rule), by

Holders or beneficial owners that are not, and have not at any time during the preceding three months been, an Affiliate of the Corporation;

(iii) qualify or register such shares under applicable U.S. state securities laws, to the extent required in the Corporation's reasonable judgment; provided, that, the Corporation will not be required to qualify as a foreign corporation in, or consent to general service of process under the laws of, any jurisdiction where the Corporation is not at such time so qualified or subject to such service of process;

(iv) to the extent applicable, have such shares of Common Stock approved for listing on any U.S. national or regional securities exchange on which the Common Stock is then listed; and

(v) to the extent applicable, obtain any approval as may be required by the applicable rules and regulations of the NYSE American and any other U.S. national securities exchange on which the Common Stock is then listed.

(f) Notwithstanding anything herein to the contrary, if the Corporation has not obtained any required approval pursuant to Section 3(B)(e) above from the stockholders, then it may not issue the applicable shares of Common Stock otherwise issuable in connection with such Stock Dividend. The Corporation shall issue any such deferred shares of Common Stock promptly upon obtaining all required stockholder approvals.

(g) At the Corporation's option, it may pay any Stock Dividend in cash. To exercise such option, the Corporation shall provide notice to the Holders at least 10 days prior to the relevant Dividend Payment Date. If the Corporation exercises this option, it must pay the entire relevant Stock Dividend in cash.

Section 4. **Voting.** Other than as may be required by law, the Preferred Stock shall have no voting rights and no Holder shall be entitled to vote on any matter.

Section 5. **Conversion.** The Preferred Stock shall not be, pursuant to the terms hereof, convertible or exchangeable for any stock or other securities or property of the Corporation.

Section 6. **Liquidation Preference.**

(a) Subject to the rights of the holders of any Senior Securities and Parity Securities, in the event of any liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary, before any payment or distribution of the assets of the Corporation (whether capital or surplus) shall be made or set aside for the holders of Junior Securities, as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation, each Holder shall be entitled to receive an amount in cash per share of Preferred Stock equal to the sum of (i) \$25.00, (ii) all accumulated accrued and unpaid cash dividends thereon (whether or not earned or declared) to, but, excluding, the date of final distribution to such Holder; (iii) all unpaid Stock Dividends, and (iv) assuming, for the purposes hereof, that the date immediately prior to the date of final distribution was a date on which a Stock Dividend would be paid, an amount determined by what a full Stock Dividend would be for the then current Stock Dividend Period multiplied by a fraction, the numerator of which would be the number of days since the end of the prior Stock Dividend Period and the denominator of which would be the total number of days in the then current Stock Dividend Period (such sum, the "Liquidation Payment"). If, upon any liquidation, dissolution or winding up of the Corporation, the assets of the Corporation, or proceeds thereof, distributable among the Holders shall be insufficient to pay in full the preferential amount aforesaid and liquidating payments

on any other shares of any class or series of Parity Securities as to the distribution of assets on any liquidation, dissolution or winding up of the Corporation, then such assets, or proceeds thereof, shall be distributed among the Holders and the holders of any such Parity Securities ratably in accordance with the respective amounts that would be payable on such shares of Preferred Stock and any other such shares of Parity Securities if all amounts payable thereon were paid in full. For purposes of this Section 6, none of: (i) a consolidation or merger of the Corporation with one or more corporations or other entities; (ii) a sale, lease or transfer of all or substantially all of the Corporation's assets; or (iii) a statutory share exchange, shall be deemed to be a liquidation, dissolution or winding up, voluntary or involuntary, of the Corporation.

(b) Subject to the rights of the holders of Senior Securities and Parity Securities upon liquidation, dissolution or winding up, upon any liquidation, dissolution or winding up of the Corporation, after payment shall have been made in full to the Holders, as provided above, any other series or class or classes of Junior Securities shall, subject to the respective terms and provisions (if any) applying thereto, be entitled to receive any and all assets remaining to be paid or distributed, and the Holders shall not be entitled to share therein.

Section 7. **Security.** The Corporation's obligation to pay the cash dividends and Stock Dividends pursuant to Section 3 and the Liquidation Payment pursuant to Section 6 shall be secured by the outstanding common stock of FOXO Acquisition Corporation, a wholly-owned Subsidiary of the Corporation, pursuant to the terms of that certain Security Agreement, to be entered into by the Corporation prior to the issuance of any shares of Preferred Stock.

Section 8. **Certain Adjustments.** If, at any time while the Preferred Stock is outstanding, (i) the Corporation, directly or indirectly, in one or more related transactions, effects any merger or consolidation of the Corporation into another Person, or (ii) the Corporation, directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions (each a "Fundamental Transaction"), then the Corporation shall cause any successor entity in a Fundamental Transaction in which the Corporation is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Corporation under this Certificate of Designation and shall deliver to the Holder in exchange for this Preferred Stock a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Preferred Stock. Upon the occurrence of any such Fundamental Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Certificate of Designation referring to the "Corporation" shall refer instead to the Successor Entity), and may exercise every right and power of the Corporation and shall assume all of the obligations of the Corporation under this Certificate of Designation with the same effect as if such Successor Entity had been named as the Corporation herein.

Section 9. **Ranking.** With respect to the payment of dividends and as to the distribution of assets upon liquidation, dissolution or winding up, the Preferred Stock shall rank senior to the Junior Securities, on a parity with the Parity Securities and junior to the Senior Securities.

Section 10. **Redemption.**

(a) **Corporation Optional Redemption.** At any time, the Corporation shall have the right to redeem all, or any part, of the Preferred Stock then outstanding. The Preferred Stock subject to redemption pursuant to this Section 10(a) shall be redeemed by the Corporation in cash in an amount equal to, for each share of Preferred Stock being redeemed, what would be payable as the Liquidation Payment if such amount were payable on the date the redemption occurs as if such redemption constituted a liquidation of the Corporation. The Corporation may exercise its right to require redemption under this Section 10(a) by delivering a written notice thereof to all the Holders. Each redemption notice

shall be irrevocable. The notice shall (x) state the date on which the redemption shall occur, which shall not be less than five Trading Days nor more than 20 Trading Days following the delivery of the notice and (y) state the number of shares of Preferred Stock being redeemed from each Holder.

(b) Mechanics of Redemption. Subject to clause (d) below, the Corporation shall deliver the applicable redemption prices to each Holder in cash on the applicable redemption date. In the event of redemption of less than all of the Preferred Stock, the Corporation shall deliver to each Holder a new certificate or other evidence of ownership representing the shares of Preferred Stock which have not been redeemed. If the Corporation does not pay the applicable redemption price to a Holder, such Holder, at its option, may deliver notice to the Corporation that the redemption of its shares for which it has not been paid shall be null and void.

(c) Effect of Redemption. From and after the redemption date and the payment of the applicable redemption price, all such redeemed shares of Preferred Stock shall no longer be deemed to be outstanding, and all of the rights of Holders will terminate with respect to such shares.

(d) Dividend Record Date. If the Corporation redeems any shares of Preferred Stock and the applicable redemption date occurs after a Dividend Record Date and on or prior to the related Dividend Payment Date, then the cash dividend and Stock Dividend payable with respect to such shares called for redemption shall be payable on the Dividend Payment Date to the Holders of record at the close of business on such Dividend Record Date, and shall not be payable as part of the redemption price for such shares.

Section 11. Miscellaneous.

(a) Notices. Any and all notices or other communications or deliveries to be provided by the Holders hereunder, shall be in writing and delivered personally, by e-mail attachment, or sent by a nationally recognized overnight courier service, addressed to the Corporation, at the address of its principal executive offices, Attention: Seamus Lagan, e-mail address slagan@foxotechnologies.com, or such other e-mail address or address as the Corporation may specify for such purposes by notice to the Holders delivered in accordance with this Section 11. Any and all notices or other communications or deliveries to be provided by the Corporation hereunder shall be in writing and delivered personally, by e-mail attachment, or sent by a nationally recognized overnight courier service addressed to each Holder at the e-mail address or address of such Holder appearing on the books of the Corporation. Any notice or other communication or deliveries hereunder shall be deemed given and effective on the earliest of (i) the date of transmission, if such notice or communication is delivered by e-mail attachment at the e-mail address set forth in this Section prior to 5:30 p.m. (New York City time) on any day that is a Trading Day (ii) the next Trading Day after the date of transmission, if such notice or communication is delivered via e-mail attachment at the e-mail address set forth in this Section on a day that is not a Trading Day or later than 5:30 p.m. (New York City time) on any Trading Day, (iii) the second Trading Day following the date of mailing, if sent by U.S. nationally recognized overnight courier service, or (iv) upon actual receipt by the party to whom such notice is required to be given.

(b) Lost or Mutilated Preferred Stock Certificate. If a Holder's Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

(c) Governing Law. All questions concerning the construction, validity, enforcement and interpretation of this Certificate of Designation shall be governed by and construed and enforced in accordance with the internal laws of the State of Delaware, without regard to the principles of conflict of laws thereof. All legal proceedings concerning the interpretation, enforcement and defense of the Preferred Stock or this Certificate of Designation (whether brought against a party hereto or its respective Affiliates, directors, officers, shareholders, employees or agents) shall be commenced in the state and federal courts sitting in the City of New York, Borough of Manhattan (the "New York Courts"). The Corporation and each Holder hereby irrevocably submits to the exclusive jurisdiction of the New York Courts for the adjudication of any dispute hereunder or in connection herewith or with any transaction contemplated hereby or discussed herein, and hereby irrevocably waives, and agrees not to assert in any suit, action or proceeding, any claim that it is not personally subject to the jurisdiction of such New York Courts, or such New York Courts are improper or inconvenient venue for such proceeding. The Corporation and each Holder hereby irrevocably waives personal service of process and consents to process being served in any such suit, action or proceeding by mailing a copy thereof via registered or certified mail or overnight delivery (with evidence of delivery) to such party at the address in effect for notices to it under this Certificate of Designation and agrees that such service shall constitute good and sufficient service of process and notice thereof. Nothing contained herein shall be deemed to limit in any way any right to serve process in any other manner permitted by applicable law. The Corporation and each Holder hereby irrevocably waives, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Certificate of Designation or the transactions contemplated hereby. If the Corporation or any Holder shall commence an action or proceeding to enforce any provisions of this Certificate of Designation, then the prevailing party in such action or proceeding shall be reimbursed by the other party for its attorneys' fees and other costs and expenses incurred in the investigation, preparation and prosecution of such action or proceeding.

(d) Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holder. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation on any other occasion. Any waiver by the Corporation or a Holder must be in writing.

(e) Severability. If any provision of this Certificate of Designation is invalid, illegal or unenforceable, the balance of this Certificate of Designation shall remain in effect, and if any provision is inapplicable to any Person or circumstance, it shall nevertheless remain applicable to all other Persons and circumstances. If it shall be found that any interest or other amount deemed interest due hereunder violates the applicable law governing usury, the applicable rate of interest due hereunder shall automatically be lowered to equal the maximum rate of interest permitted under applicable law.

(f) Next Business Day. Whenever any payment or other obligation hereunder shall be due on a day other than a Business Day, such payment or other obligation shall be made or performed on the next succeeding Business Day.

(g) Headings. The headings contained herein are for convenience only, do not constitute a part of this Certificate of Designation and shall not be deemed to limit or affect any of the provisions hereof.

(h) Status of Redeemed Preferred Stock. If any shares of Preferred Stock shall be redeemed or reacquired by the Corporation, such shares shall resume the status of authorized but unissued shares of Preferred Stock

RESOLVED, FURTHER, that the Chief Executive Officer, the president or any vice-president, and the secretary or any assistant secretary, of the Corporation be and they hereby are authorized and directed to prepare and file this Certificate of Designation of Preferences, Rights and Limitations in accordance with the foregoing resolution and the provisions of Delaware law.

[Signature on Following Page]

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Designation of Preferences, Rights and Limitations of Series E Cumulative Redeemable Secured Preferred Stock to be signed and attested this 29th day of October 2025.

FOXO TECHNOLOGIES INC.

Seamus Lagan

Seamus Lagan
Chief Executive Officer