

PROFIT CORPORATION
APPLICATION BY FOREIGN PROFIT CORPORATION TO FILE AMENDMENT TO APPLICATION FOR
AUTHORIZATION TO TRANSACT BUSINESS IN FLORIDA
(Pursuant to s. 607.1504, F.S.)

SECTION I
(1-3 MUST BE COMPLETED)

F19000001310

(Document number of corporation (if known))

1. Cyxtera Cybersecurity, Inc.

(Name of corporation as it appears on the records of the Department of State)

2. Delaware

(Incorporated under laws of)

3. 03/19/2019

(Date authorized to do business in Florida)

SECTION II
(4-7 COMPLETE ONLY THE APPLICABLE CHANGES)

4. If the amendment changes the name of the corporation, when was the change effected under the laws of its jurisdiction of incorporation? _____

5. Appgate Cybersecurity, Inc.

(Name of corporation after the amendment, adding suffix "corporation," "company," or "incorporated," or appropriate abbreviation, if not contained in new name of the corporation)

(If new name is unavailable in Florida, enter alternate corporate name adopted for the purpose of transacting business in Florida) _____

6. If the amendment changes the period of duration, indicate new period of duration.

(New duration)

7. If the amendment changes the jurisdiction of incorporation, indicate new jurisdiction.

(New jurisdiction)

8. **If amending the registered agent and/or registered office address in Florida, enter the name of the new registered agent and/or the new registered office address:**

Name of New Registered Agent _____

(Florida street address)

New Registered Office Address: _____

(City)

Florida _____

(Zip Code)

New Registered Agent's Signature, if changing Registered Agent:

I hereby accept the appointment as registered agent. I am familiar with and accept the obligations of the position.

Signature of New Registered Agent, if changing

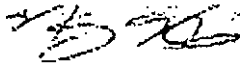
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 STATE OF FLORIDA
 DEPARTMENT OF STATE
 TALLAHASSEE, FLORIDA

9. If the amendment changes person, title or capacity in accordance with 607.1504 (4), indicate that change:

<u>Title/ Capacity</u>	<u>Name</u>	<u>Address</u>	<u>Type of Action</u>
	Please see attached		<input type="checkbox"/> Add
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10. Attached is a certificate or document of similar import, evidencing the amendment, authenticated not more than 90 days prior to delivery of the application to the Department of State, by the Secretary of State or other official having custody of corporate records in the jurisdiction under the laws of which it is incorporated.



(Signature of a director, president or other officer - if in the hands of a receiver or other court appointed fiduciary, by that fiduciary)

Nicholas Nichols

(Typed or printed name of person signing)

Attorney-in-Fact

(Title of person signing)

FILING FEE \$35.00

Appgate Cybersecurity, Inc.
Current list of Officers and Director

Please remove all current listed officer and replace with the following:

Manuel D. Medina – Executive Chairman

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

Barry Field – Chief Executive Officer

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

Jawahar Sivasankaran – President and Chief Operating Officer

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

Rene A. Rodriguez – Chief Financial Officer and Director

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

Alberto Arango – Chief Revenue Officer

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

Jeremy M. Dale – General Counsel, Secretary and Director

2333 Ponce De Leon Blvd., Suite 900, Coral Gables, Florida 33134

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STATE OF FLORIDA
TALLAHASSEE

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"NEWTOWN MERGER SUB CORP.", A DELAWARE CORPORATION,
WITH AND INTO "CYXTERA CYBERSECURITY, INC." UNDER THE NAME OF "APPGATE CYBERSECURITY, INC.", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE ON THE TWELFTH DAY OF OCTOBER, A.D. 2021, AT 12:30 O`CLOCK P.M.



Jeffrey W. Bullock
Jeffrey W. Bullock, Secretary of State

6173879 8100M
SR# 20213524582

Authentication: 204423303
Date: 10-15-21

State of Delaware
Secretary of State
Division of Corporations
Delivered 12:30 PM 10/12/2021
FILED 12:30 PM 10/12/2021
SR 20213488579 - File Number 6173879

CERTIFICATE OF MERGER

OF

**NEWTOWN MERGER SUB CORP.
(a Delaware Corporation)**

WITH AND INTO

**CYXTERA CYBERSECURITY, INC.
(a Delaware Corporation)**

Pursuant to the provisions of Section 251 of the Delaware General Corporation Law, the undersigned corporation, organized and existing under and by virtue of the laws of the State of Delaware, does hereby certify that:

1. The name and state of incorporation of each of the constituent corporations to the merger are as follows:

<u>Name</u>	<u>State</u>
Cyxtera Cybersecurity, Inc.	Delaware
Newtown Merger Sub Corp.	Delaware

2. An Agreement and Plan of Reorganization (the "Agreement") by and among the constituent corporations and the other parties thereto has been approved, adopted, certified, executed and acknowledged by each of the constituent corporations in accordance with the requirements of Section 251 and Section 228 of the Delaware General Corporation Law.

3. Pursuant to the Agreement, Cyxtera Cybersecurity, Inc. will continue to exist after the merger as the surviving corporation under the name Appgate Cybersecurity, Inc. (the "Surviving Corporation").

4. As of the effective time of the merger, the Certificate of Incorporation of the Surviving Corporation shall be as attached to this Certificate of Merger as **Exhibit A**.

5. The Surviving Corporation has placed the executed Agreement on file at the following address: 2333 Ponce de Leon Blvd., Suite 900, Coral Gables, FL 33134.

6. A copy of the Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of any constituent corporation.

7. The merger shall become effective upon the filing hereof with the Secretary of State of the State of Delaware.

IN WITNESS WHEREOF, the Surviving Corporation has caused this Certificate of Merger to be executed by a duly authorized officer on the 12th day of October, 2021.

CYXTERA CYBERSECURITY, INC.

By: 
Name: Barry Field
Title: Chief Executive Officer

Exhibit A

Appgate Cybersecurity, Inc. Amended and Restated Certificate of Incorporation

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION**

OF

APPGATE CYBERSECURITY, INC.

FIRST: The name of the corporation is Appgate Cybersecurity, Inc. (hereinafter sometimes referred to as the "Corporation").

SECOND: The registered office of the Corporation is to be located at 3411 Silverside Road, Tatnall Building, Suite 104, Wilmington, New Castle County, DE 19810. The name of its registered agent at that address is Corporate Creations Network Inc.

THIRD: The purpose of the Corporation shall be to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware, as it now exists or may hereafter be amended or supplemented (the "DGCL").

FOURTH: The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 1,000 shares of common stock, par value of \$0.01 per share ("Common Stock").

FIFTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the Corporation, and for further definition, limitation, and regulation of the powers of the Corporation and of its directors and stockholders:

A. Election of directors need not be by ballot unless the bylaws of the Corporation (the "Bylaws") so provide.

B. The Board of Directors shall have the power, without the assent or vote of the stockholders, to make, alter, amend, change, add to, or repeal the Bylaws of the Corporation as provided in the Bylaws of the Corporation.

C. The directors in their discretion may submit any contract or act for approval or ratification at any annual meeting of the stockholders or at any meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or be ratified by the vote of the holders of a majority of the stock of the Corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and binding upon the Corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the Corporation, whether or not the contract or act would otherwise be open to legal attack because of directors' interests, or for any other reason.

D. In addition to the powers and authorities hereinbefore or by statute expressly

conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation; subject, nevertheless, to the provisions of the statutes of Delaware, of this Certificate of Incorporation, and to any Bylaws from time to time made by the stockholders; provided, however, that no Bylaw so made shall invalidate any prior act of the directors which would have been valid if such Bylaw had not been made.

SIXTH: A. A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction from which the director derived an improper personal benefit. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Any repeal or modification of this Paragraph A by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation with respect to events occurring prior to the time of such repeal or modification.

B. The Corporation, to the full extent permitted by Section 145 of the DGCL, as amended from time to time, shall indemnify all persons whom it may indemnify pursuant thereto. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative, or investigative action, suit, or proceeding for which such officer or director may be entitled to indemnification hereunder shall be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Corporation as authorized hereby.

SEVENTH: Whenever a compromise or arrangement is proposed between this Corporation and its creditors or any class of them and/or between this Corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this Corporation or of any creditor or stockholder thereof or on the application of any receiver or receivers appointed for this Corporation under Section 291 of the DGCL or on the application of trustees in dissolution or of any receiver or receivers appointed for this Corporation under Section 279 of the DGCL, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this Corporation, as the case may be, agrees to any compromise or arrangement and to any reorganization of this Corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors and/or on all the stockholders or class of stockholders of this Corporation, as the case may be, and also on this Corporation.

EIGHTH: A. Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for any stockholder (including a beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation, its directors, officers or employees arising pursuant to any provision of the DGCL, this Amended and Restated Certificate of Incorporation or the Bylaws, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine and, if brought outside of Delaware, the stockholder bringing the suit will be deemed to have consented to service of process on such stockholder's counsel. Notwithstanding the foregoing, the Court of Chancery of the State of Delaware shall not be the sole and exclusive forum for any of the following actions: (A) as to which the Court of Chancery in the State of Delaware determines that there is an indispensable party not subject to the jurisdiction of the Court of Chancery (and the indispensable party does not consent to the personal jurisdiction of the Court of Chancery within ten days following such determination), (B) which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, (C) for which the Court of Chancery does not have subject matter jurisdiction, or (D) any action arising under the Securities Act of 1933, as amended ("Securities Act"). Furthermore, notwithstanding anything to the contrary in the foregoing, the provisions of this Paragraph A will not apply to suits brought to enforce any liability or duty created by the Securities Act or Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

B. If any action the subject matter of which is within the scope of Paragraph A immediately above is filed in a court other than a court located within the State of Delaware (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce Paragraph A immediately above (a "Foreign Enforcement Action") and (ii) having service of process made upon such stockholder in any such Foreign Enforcement Action by service upon such stockholder's counsel in the Foreign Enforcement Action as agent for such stockholder.

C. If any provision or provisions of this Article EIGHTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article EIGHTH (including, without limitation, each portion of any sentence of this Article EIGHTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article EIGHTH.