

# Delaware

Page 1

The First State

*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 RESTATED CERTIFICATE OF "NYRADA INC.", FILED IN THIS OFFICE ON THE TWELFTH DAY OF NOVEMBER, A.D. 2019, AT 2:26 O`CLOCK P.M.*

*A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.*



  
Jeffrey W. Bullock, Secretary of State

6526545 8100  
SR# 20198035818

Authentication: 203985888  
Date: 11-12-19

You may verify this certificate online at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
NYRADA INC.**

NYRADA Inc., a corporation organized and existing under the laws of the State of Delaware, certifies that:

**ONE:** The date of filing of the original Certificate of Incorporation (the “**Original Certificate**”) of this corporation with the Secretary of State of the State of Delaware was August 29, 2017. The Original Certificate was amended by a Certificate of Amendment filed with the Secretary of State of the State of Delaware on July 10, 2019 and a Certificate of Amendment filed with the Secretary of State of the State of Delaware on November 1, 2019 (the Original Certificate, as amended by the Certificates of Amendment, being hereinafter referred to as the “**Certificate of Incorporation**”).

**TWO:** This Amended and Restated Certificate of Incorporation has been duly approved by the Board of Directors of this corporation. This Amended and Restated Certificate of Incorporation was duly adopted in accordance with Sections 242 and 245 of the General Corporation Law of the State of Delaware and has been duly approved by the written consent of the stockholders of this corporation in accordance with Section 228 of the General Corporation Law of the State of Delaware.

**THREE:** The Certificate of Incorporation of this corporation is amended and restated to read as follows:

**I.**

The name of this corporation is NYRADA Inc. (the “**Corporation**”).

**II.**

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

**III.**

The nature of the business or purposes to be conducted or promoted by the Corporation is to, and the Corporation shall have all necessary corporate power to, engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the “**General Corporation Law**”).

#### IV.

The total number of shares of all classes of stock which the Corporation shall have authority to issue is 400,000,000 shares of Common Stock, US\$0.00001 par value per share (the “**Common Stock**”), 332,000,000 of which shall be Class A Common Stock (the “**Class A Common Stock**”), 50,000,000 of which shall be Class B Common Stock (the “**Class B Common Stock**”), 12,000,600 of which shall be Nox Performance Common Stock (the “**Nox Performance Common Stock**”), and 5,999,400 of which shall be Altnia Performance Common Stock (the “**Altnia Performance Common Stock**” and together with the Nox Performance Common Stock, collectively, the “**Performance Common Stock**”). There shall be no cumulative voting.

##### A. Class A Common Stock.

1. **Conversion.** Each share of the Corporation’s Common Stock outstanding immediately prior to the filing of this Amended and Restated Certificate of Incorporation (“**Restated Certificate**”) with the Secretary of State of the State of Delaware shall convert into one share of the Corporation’s Class A Common Stock automatically upon the filing of this Restated Certificate with the Secretary of State of the State of Delaware. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by, in addition to any other votes, consents or approvals that may be required by law or by the provisions of the Restated Certificate, or the bylaws of the Corporation (as amended from time to time, the “**Bylaws**”), the affirmative vote (including by written consent in lieu of a meeting) of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of capital stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law.

2. **Dividends and Distributions.** The holders of Class A Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors of the Corporation (the “**Board of Directors**”), out of any assets of the Corporation legally available therefor, any dividends and other distributions of cash, property or shares of the Corporation as may be declared from time to time by the Board of Directors.

3. **Liquidation, Dissolution or Winding Up.** In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, the holders of Class A Common Stock shall be entitled to share, ratably according to the number of shares of Class A Common Stock held by them, in all assets of the Corporation available for distribution to its stockholders. Neither the holders of Class B Common Stock nor Holders shall be entitled to share in such assets of the Corporation available for distribution to its stockholders.

4. **Voting.** Each outstanding share of Class A Common Stock shall entitle the holder thereof to one vote on each matter properly submitted to the stockholders of the Corporation for their vote. Except as may be required by law, neither the Class B Common Stock nor the Performance Common Stock shall not entitled to any voting rights.

B. Class B Common Stock.

1. Conversion. For the purposes of this Restated Certificate, “**ASX**” means ASX Limited ACN 008 624 691 or the market it operates, as the context requires; “**Dispose**” shall have the meaning given in the Listing Rules and “**Disposal**” shall have the corresponding meaning; and “**Listing Rules**” means the Listing Rules of ASX and any other rules of ASX which are applicable while the Corporation is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX. In connection with the Corporation’s closing of an initial public offering pursuant to a prospectus under the Australian Corporations Act 2001 (Cth), covering the offers of securities of the Corporation received in Australia of CHESS Depository Interests (each a “**CDI**”) (with each CDI representing an interest in one share of Class A Common Stock), certain stockholders of the Corporation were or will be required by ASX to enter into a restriction agreement (each a “**Mandatory Escrow Agreement**”) with the Corporation under which the stockholder agreed, among other things, to, or the Corporation was or will be required by the ASX to issue a restriction notice (each a “**Mandatory Escrow Notice**”) to certain stockholders of the Corporation pursuant to which the Corporation notified the stockholder of, certain restrictions and prohibitions from engaging in transactions in the shares of Class A Common Stock (including Class A Common Stock in the form of CDIs) held or acquired by the stockholder (including shares of Class A Common Stock that may be acquired upon exercise of a stock option, warrant or other right) or shares of Class A Common Stock which attach to or arise from such Class A Common Stock (collectively, the “**Restricted Securities**”) for a period of time identified in the Mandatory Escrow Agreement or the Mandatory Escrow Notice (as the case may be) (the “**Lock Up Period**”). The Restricted Securities shall automatically and without further action be converted into shares of Class B Common Stock, on a one for-one basis, if the Board of Directors determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder’s Mandatory Escrow Agreement or Mandatory Escrow Notice or breached the Listing Rules, this Restated Certificate or the Bylaws relating to the Restricted Securities. Any shares of Class A Common Stock converted to Class B Common Stock pursuant to this Article Fourth shall automatically and without further action be converted back into shares of Class A Common Stock, on a one-for-one basis, upon the earlier to occur of the expiration of the Lock-Up Period in the Mandatory Escrow Agreement or Mandatory Escrow Notice (as the case may be) which applied to the shares of Class A Common Stock that were originally converted to Class B Common Stock or the breach of the Mandatory Escrow Agreement, the Mandatory Escrow Notice, the Listing Rules, this Restated Certificate or the Bylaws relating to the Restricted Securities being remedied. A holder of Restricted Securities cannot Dispose of, or agree or offer to Dispose of, their Restricted Securities during the Lock Up Period attached to those Restricted Securities except as permitted by the Listing Rules or ASX. If the Restricted Securities are in the same class as the Corporation’s quoted securities, the stockholder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Corporation’s issuer sponsor subregister (as defined by the Listing Rules) and are to have a holding lock (as defined by the Listing Rules) applied for the duration of the Lock Up Period attached to those Restricted Securities. Except as permitted by the Listing Rules or ASX, the Board of Directors will refuse to acknowledge any Disposal (including, without limitation, registering a transfer) of Restricted Securities during the Lock Up Period for those Restricted Securities. A holder of Restricted Securities will not be entitled to participate in any return of capital on the Restricted

Securities during the Lock Up Period applicable to those Restricted Securities except as permitted by the Listing Rules or ASX.

2. No Dividends or Distributions. The holders of Class B Common Stock shall not be entitled to share in any dividends or other distributions of cash, property or shares of the Corporation, whether in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or otherwise.

C. Performance Common Stock.

1. Conversion.

1.1 Each share of Performance Common Stock shall be convertible into one (1) fully paid and non-assessable share of Class A Common Stock upon the terms and conditions set forth herein. The Corporation will at all times reserve and keep available, solely for the purpose of issue upon conversion of the outstanding shares of Performance Common Stock, such number of shares of Class A Common Stock as shall be issuable upon the conversion of all such outstanding shares; provided, that nothing contained herein shall be construed to preclude the Corporation from satisfying its obligations in respect of the conversion of the outstanding shares of Performance Common Stock by delivery of shares of Class A Common Stock which are held in the treasury of the Corporation. The Corporation covenants that if any shares of Class A Common Stock, required to be reserved for purposes of conversion hereunder, require registration with or approval of any governmental authority under any federal or state law before such shares of Class A Common Stock may be issued upon conversion, the Corporation will use its best efforts to cause such shares to be duly registered or approved, as the case may be. The Corporation will endeavor to list the shares of Class A Common Stock required to be delivered upon conversion prior to such delivery upon each national securities exchange, if any, upon which the outstanding Class A Common Stock is listed at the time of such delivery. The Corporation covenants that all shares of Class A Common Stock which shall be issued upon conversion of the shares of Performance Common Stock will, upon issue, be fully paid and non-assessable and not entitled to any preemptive rights.

1.2 Fifty Percent (50%) of the Nox Performance Common Stock will automatically convert into Class A Common Stock upon 10 Business Days after the First Milestone and the Second Nox Milestone are both satisfied, such that each such share of Nox Performance Common Stock will convert into one share of Class A Common Stock.

1.3 Fifty Percent (50%) of the Nox Performance Common Stock will automatically convert into Class A Common Stock upon 10 Business Days after the First Milestone and the Third Nox Milestone are both satisfied, such that each such share of Nox Performance Common Stock will convert into one share of Class A Common Stock.

1.4 The Altnia Performance Common Stock will automatically convert into Class A Common Stock upon 10 Business Days after the First Milestone and the Second Altnia Milestone are both satisfied, such that each such share of Altnia Performance Common Stock will convert into one share of Class A Common Stock.

1.5 Upon the occurrence of a Change of Control:

1.5.1 that number of shares of Performance Common Stock that, after conversion, is no more than 10% of the issued and outstanding capital stock of the Corporation (as at the date of the Change of Control) may by the Holders be converted into shares of Class A Common Stock;

1.5.2 the Corporation shall ensure a pro-rata allocation of shares of Class A Common Stock issued under this paragraph to all Holders; and

1.5.3 any shares of Performance Common Stock that are not converted into shares of Class A Common Stock in accordance with this Section 1.5 will continue to be held by the Holder on the same terms and conditions.

1.6 Procedures for Conversion. The Corporation will issue the Holders with a new holding statement for the Class A Common Stock within 2 Business Days following the conversion of the shares of Performance Common Stock into shares of Class A Common Stock.

2. Restrictions on Transfer. The shares of Performance Common Stock shall be issued only to, and shall be held only by those persons designated by the Board of Directors. Any purported sale, transfer, pledge or other disposition of any shares of Performance Common Stock to any person, other than a successor to such designated person by merger or reorganization of the designated person, or a duly authorized agent acting for the benefit of such designated person, shall be null and void and of no force and effect.

3. No Dividends or Distributions. Holders shall not be entitled to share in any dividends or other distributions of cash, property or shares of the Corporation, whether in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Corporation or otherwise.

4. No Preemptive Rights. No Holder shall be entitled as of right to purchase or subscribe for any part of any unissued or treasury stock of the Corporation, or of any additional stock of any class, to be issued by reason of any increase of the authorized capital stock of the Corporation, or to be issued from any unissued or additionally authorized stock, or of bonds, certificates of indebtedness, debentures or other securities convertible into stock of the Corporation, but any such unissued or treasury stock, or any such additional authorized issue of new stock or securities convertible into stock, may be issued and disposed of by the Board of Directors to such persons, firms, corporations or associations, and upon such terms as the Board of Directors may, in its discretion, determine, without offering to the Holders then of record, on the same terms or any terms.

5. Reorganization. If and for the period that the Corporation is admitted to the official list of ASX:

5.1 If there shall occur a reorganization, recapitalization, reclassification, consolidation or merger involving the Corporation (“**Reorganization**”), then the rights of the Holder (including the number of shares of Class A Common Stock into which a share of Performance Common Stock may be converted) will be changed to the extent necessary

to comply with the Listing Rules applying to a reorganization of capital stock at the time of the Reorganization.

5.2 Any calculations or adjustments which are required to be made will be made by the Board of Directors and will, in the absence of manifest error, be final and conclusive and binding on the Corporation and the Holder.

5.3 The Company must, within a reasonable period, give to the Holder notice of any change to the number of shares of Class A Common Stock into which a share of Performance Common Stock held by the Holder may be converted.

6. Redemption. If the Performance Common Stock have not been converted into shares of Class A Common Stock under Section 1 within five (5) years after the date of issue of the Performance Common Stock, then the Performance Common Stock held by a Holder at that date will be automatically redeemed by the Corporation for the sum of AUD\$1.00 within ten (10) Business Days of the expiration of that five (5) year period.

7. Definitions. For purposes of this Article Fourth:

7.1 “AUD” means the lawful currency of the Commonwealth of Australia.

7.2 “**Business Days**” means a day that is not a Saturday, Sunday, bank holiday or public holiday in Sydney, Australia.

7.3 “**Change of Control**” means a merger or consolidation in which

7.3.1 the Corporation is a constituent party; or

7.3.2 a subsidiary of the Corporation is a constituent party and the Corporation issues shares of its capital stock pursuant to such merger or consolidation,

except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation; or

7.3.3 (1) the sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Corporation or any subsidiary of the Corporation of all or substantially all the assets of the Corporation and its subsidiaries taken as a whole, or (2) the sale or disposition (whether by merger, consolidation or otherwise, and whether in a single transaction or a series of related transactions) of one or more subsidiaries of the Corporation if substantially all of the assets of the Corporation and its subsidiaries taken as a whole are held by such subsidiary or subsidiaries, except where such sale,

lease, transfer, exclusive license or other disposition is to a wholly owned subsidiary of the Corporation.

7.4 “**First Milestone**” means the trading price for the Corporation’s CDIs achieving at least AUD0.40 for 5 consecutive trading days on the ASX.

7.5 “**Holder**” means the owner of a share of Performance Common Stock.

7.6 “**Second Altnia Milestone**” means the Scientific Advisory Board to the Corporation determining that, based on in-vivo data (being data resulting out of a study to establish proof of principle in an animal model), the final lead PCSK9 inhibitor drug candidate (the intellectual property in which is, as at the date of issue of the Performance Common Stock, owned by the Corporation’s wholly-owned subsidiary, Cardio Therapeutics Pty. Ltd.) is ready to proceed to pre-clinical safety and toxicology studies.

7.7 “**Second Nox Milestone**” means the Scientific Advisory Board to the Corporation determining that, based on in-vivo data (being data resulting out of a study to establish proof of principle in an animal model), the final lead neuroprotectant drug candidate (the intellectual property in which is, as at the date of issue of the Performance Common Stock, owned by the Corporation’s wholly-owned subsidiary, Norbio No. 1 Pty Ltd) is ready to proceed to pre-clinical safety and toxicology studies.

7.8 “**Third Nox Milestone**” means the Scientific Advisory Board to the Corporation determining that, based on in-vivo data (being data resulting out of a study to establish proof of principle in an animal model), the final lead peripheral neuropathic pain drug candidate (the intellectual property in which is, as at the date of issue of the Performance Common Stock, owned by the Corporation’s wholly-owned subsidiary, Norbio No. 2 Pty Ltd) is ready to proceed to pre-clinical safety and toxicology studies.

## V.

Except as otherwise required by law, any of the rights, powers, preferences, notices and other terms of the Common Stock set forth herein may be waived on behalf of all holders of outstanding Common Stock (including retroactively or prospectively) with the approval, by written consent or vote at a meeting, of the holders of a majority of the shares of Common Stock entitled to vote then outstanding. A stockholder may also independently waive his, her or its own rights, powers, preferences, notices and/or other terms applicable thereto in writing, without notice to, or the consent or approval of, any other stockholder.

## VI.

For the management of the business and for the conduct of the affairs of the Corporation, and in furtherance and not in limitation of the powers of the Corporation and of its directors and of its stockholders or any class or series thereof, as the case may be, conferred by the State of Delaware, it is further provided that:



1. Subject to any other votes, consents or approvals required by the Restated Certificate or the Bylaws of the Corporation, the Board of Directors is expressly authorized to make, repeal, alter, amend, supplement and/or rescind any or all of the Bylaws of the Corporation.

2. Subject to any other votes, consents or approvals required by the Restated Certificate or the Bylaws of the Corporation, the number of directors of the Corporation shall be determined in the manner set forth in the Bylaws of the Corporation.

## VII.

Elections of directors need not be by written ballot unless the Bylaws of the Corporation shall so provide.

## VIII.

Meetings of stockholders may be held within or without the State of Delaware, as the Bylaws of the Corporation may provide. The books of the Corporation may be kept outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in the Bylaws of the Corporation.

## IX.

The Corporation shall indemnify each of the Corporation's directors and officers in each and every situation where, under Section 145 of the General Corporation Law, as amended from time to time ("**Section 145**"), the Corporation is permitted or empowered to make such indemnification, and to the fullest extent permitted by law. The Corporation may, in the sole discretion of the Board of Directors, indemnify any other person who may be indemnified pursuant to Section 145 to the extent the Board of Directors deems advisable, as permitted by Section 145. No person shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, provided, however, that the foregoing shall not eliminate or limit the liability of a director (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 General Corporation Law or (iv) for any transaction from which the director derived an improper personal benefit. If the General Corporation Law is subsequently amended to further eliminate or limit the liability of a director, then a director of the Corporation, in addition to the circumstances in which a director is not personally liable as set forth in the preceding sentence, shall not be liable to the fullest extent permitted by the amended General Corporation Law. For purposes of this Article, "fiduciary duty as a director" shall include any fiduciary duty arising out of serving at the Corporation's request as a director of another corporation, partnership, joint venture, trust or other enterprise, and "personally liable to the Corporation or its stockholders" shall include any liability to such other corporation, partnership, joint venture, trust or other enterprise, and any liability to the Corporation in its capacity as a security holder, joint venturer, partner, beneficiary, creditor or investor of or in any such other corporation, partnership, joint venture, trust or other enterprise. Neither any amendment nor repeal of this Article Ninth, nor the adoption of any provision of this Restated Certificate inconsistent with this Article Ninth, shall eliminate or reduce the effect of this Article Ninth, in respect of any matter occurring, or

any cause of action, suit or claim that, but for this Article Ninth, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## X.

No stockholder of the Corporation shall, solely in his, her, or its capacity as such, have a right to purchase shares of capital stock of the Corporation sold or issued by the Corporation, except to the extent that such a right is otherwise expressly provided in favor of such stockholder by the terms of a separate written agreement between the Corporation and such stockholder.

## XI.

Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery in the State of Delaware shall 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 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 General Corporation Law or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation, its directors, officers or employees governed by the internal affairs doctrine, except for, as to each of (i) through (iv) above, any claim as to which the Court of Chancery 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 (10) days following such determination), which is vested in the exclusive jurisdiction of a court or forum other than the Court of Chancery, or for which the Court of Chancery does not have subject matter jurisdiction. If any provision or provisions of this Article Eleventh 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 Eleventh (including each portion of any sentence of this Article Eleventh 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.

## XII.

The Corporation is to have perpetual existence.

**[Signature Page Follows]**

**NYRADA Inc.** has caused this Amended and Restated Certificate of Incorporation to be signed by its duly authorized officer on November 12, 2019

NYRADA Inc.

By

A handwritten signature in black ink, appearing to read 'Graham Kelly', is written over a horizontal line.

Name: Graham Kelly

Title: President and Director

**NYRADA INC.**

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**AMENDED AND  
RESTATED BYLAWS**

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**Effective as of November 25, 2019**

**ARTICLE I**

**MEETINGS OF STOCKHOLDERS**

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors or the Chairman, if there be one, or the Chief Executive Officer or President, in the absence of a Chairman, and stated in the notice of the meeting or in a duly executed waiver of notice thereof.

Section 2. Annual Meetings. The Annual Meeting of Stockholders shall be held on such date and at such time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting, at which meeting the stockholders shall elect by a plurality vote a Board of Directors, and transact such other business as may properly be brought before the meeting. Written notice of the Annual Meeting of Stockholders stating the place, date and hour of the meeting shall be given to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 3. Special Meetings. Unless otherwise prescribed by law or by the Certificate of Incorporation, Special Meetings of Stockholders, for any purpose or purposes (including the election of directors), may be called at any time by the Board of Directors or by holders representing at least twenty-five percent (25%) (by number of votes) of the capital stock issued and outstanding and entitled to vote thereat. Written notice of a Special Meeting stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder entitled to vote at such meeting.

Section 4. Quorum. Except as otherwise provided by law or by the Certificate of Incorporation, the holders of one-third (by number of votes) of the capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty days,

or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

Section 5. Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question brought before any meeting of stockholders at which a quorum is present shall be decided by the vote of the holders of a majority (by number of votes) of the capital stock issued and outstanding and entitled to vote thereat. Except as otherwise provided in the Certificate of Incorporation, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 6. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation, may be taken without a meeting, without prior notice and without a vote, by means of a consent in writing, setting forth the action so taken, signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. In the event that the action which is consented to is such as would have required the filing of a certificate under the General Corporation Law of the State of Delaware (the "**General Corporation Law**"), if such action had been voted on by stockholders at a meeting thereof, the Certificate filed shall state, in lieu of any statement concerning any vote of stockholders, that written consent and written notice has been given as provided in this Section 6 of this Article I.

Section 7. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present.

Section 8. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 7 of this Article I or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

## ARTICLE II

### DIRECTORS

Section 1. Number, Election, Resignation and Removal of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall be fixed from time to time by the Board of Directors or the holders of a majority (by number of votes) of the capital stock issued and outstanding and entitled to vote for the election of directors. The number of members of the initial Board of Directors shall be fixed at two (2). Except as provided in Section 2 of this Article II, directors shall be elected by a plurality of the votes cast at Annual Meetings of Stockholders, and each director so elected shall hold office until the next Annual Meeting and until his successor is duly elected and qualified, or until his earlier resignation or removal. Any director may resign at any time upon notice to the Corporation. Except as otherwise provided by law or the Certificate of Incorporation, any director may be removed at any time for cause or without cause by the vote of the holders of a majority (by number of votes) of the stock then entitled to vote at an election of directors. Except as otherwise provided by law or the Certificate of Incorporation, any vacancy on the Board of Directors caused by any such removal may be filled by the stockholders at such meeting or as provided in Section 2 of this Article II.

Section 2. Vacancies. Except as otherwise provided by law or the Certificate of Incorporation, vacancies, and newly created directorships resulting from any increase in the authorized number of directors, may be filled by vote of a majority of the directors then in office (even if such remaining directors constitute less than a quorum) or of the sole remaining director, and the directors so appointed shall hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier resignation or removal.

Section 3. Duties and Powers. The business of the Corporation shall be managed by or under the direction of the Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, by the Certificate of Incorporation or by these Bylaws directed or required to be exercised or performed by the stockholders.

Section 4. Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chairman, if there be one, or the Chief Executive Officer or President, in the absence of a Chairman, or any of the directors. Notice thereof stating the place, date and hour of the meeting and the purpose or purposes for which the meeting is called shall be given to each director either by mail not less than forty-eight hours before the date of the meeting, by telephone or e-mail transmission on twenty-four hours' notice, or upon such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum; Action at Meetings. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of

Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business, and the act of a majority of the directors then sitting at a meeting at which a quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 6. Actions of Board by Written Consent. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meeting by Means of Conference Telephone. Unless otherwise provided by the Certificate of Incorporation or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 7 of this Article II shall constitute presence in person at such meeting.

Section 8. Fees and Compensation. Subject to the Listing Rules, directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor. The maximum aggregate compensation permitted for all non-executive directors for their service as a member of the Board of Directors shall be US\$500,000 per annum.

Section 9. Committees. The Board of Directors may, by resolution passed by a majority of the entire Board of Directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent allowed by law and provided in the resolutions establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be fixed to all papers which require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

## **ARTICLE III**

### **OFFICERS**

Section 1. General. The officers of the Corporation shall be elected or appointed by the Board of Directors, and shall be a President, a Treasurer and a Secretary. The Board of Directors, in its discretion, may also elect or appoint a Chairman, Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Revenue Officer, Chief Technology Officer and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and/or other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders of the Corporation, nor need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors at its first meeting held after each Annual Meeting of Stockholders shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are elected or appointed and qualified, or until their earlier resignation or removal. Any officer elected by the Board of Directors may be removed with or without cause, at any time by the affirmative vote of a majority of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries and other compensation of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by any officer of the Corporation so authorized by the Board of Directors from time to time, and any such officer so authorized may, in the name of and on behalf of the Corporation, take all such action as such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation or other entity in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chairman. Without in any way limiting the power, authority or discretion of the Board of Directors to authorize other officers of the Corporation to do so from time to time, the Chairman, if one is appointed by the Board of Directors, shall have the power and authority to execute all bonds, mortgages, contracts and other instruments of the Corporation including those required to be executed under the seal of the Corporation. The Chairman, if one is appointed by the Board of Directors, shall preside at all meetings of the stockholders and the Board of Directors and shall also perform such other duties and may exercise such other powers as from time to time may be delegated or prescribed by these Bylaws or by the Board of Directors.



Section 5. Chief Executive Officer. The Chief Executive Officer (if one is appointed by the Board of Directors) shall be the chief executive officer of the Corporation and shall have general supervision of the business of the Corporation, subject to the control of the Board of Directors, and shall see that all orders and resolutions of the Board of Directors are carried into effect. Without in any way limiting the power, authority or discretion of the Board of Directors to authorize other officers of the Corporation to do so from time to time, the Chief Executive Officer shall have the power and authority to execute all bonds, mortgages, contracts and other instruments of the Corporation, including those required to be executed under the seal of the Corporation. The Chief Executive Officer, in the absence of a Chairman, shall preside at all meetings of the stockholders and, if the Chief Executive Officer is a member of the Board of Directors, the Board of Directors. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these Bylaws or by the Board of Directors.

Section 6. President. In the absence of a Chief Executive Officer, the President shall be the chief executive officer of the Corporation and shall have general supervision of the business of the Corporation, subject to the control of the Board of Directors, and shall see that all orders and resolutions of the Board of Directors are carried into effect. Without in any way limiting the power, authority or discretion of the Board of Directors to authorize other officers of the Corporation to do so from time to time, the President shall have the power and authority to execute all bonds, mortgages, contracts and other instruments of the Corporation including those required to be executed under the seal of the Corporation. The President, in the absence of a Chairman and a Chief Executive Officer, shall preside at all meetings of the stockholders and, if the President is a member of the Board of Directors, the Board of Directors. The President shall also perform such other duties and may exercise such other powers as from time to time may be assigned to him by these Bylaws or by the Board of Directors. Notwithstanding anything to the contrary contained in these Bylaws, if a Chief Executive Officer has been appointed by the Board of Directors, the President shall only have such duties and may exercise such rights and powers as from time to time may be delegated or prescribed by the Board of Directors or by the Chief Executive Officer (if any), under whose direction and supervision the President shall be.

Section 7. Treasurer. The Treasurer shall have the care and custody of the corporate funds, and other valuable effects, including securities, of the Corporation, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer, if there be one, or the President, in the absence of a Chief Executive Officer, and to the directors, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all transactions as Treasurer and of the financial condition of the Corporation. The Treasurer shall also perform such other duties as may be assigned from time to time by the Board of Directors or the Chief Executive Officer, if there be one, or the President, in the absence of a Chief Executive Officer, under whose supervision (as the case may be) he shall be. If required by the Board of Directors, the Treasurer shall give the Corporation a bond for such term, in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of such office

and for the restoration to the Corporation, in case of such person's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in such person's possession or under such person's control belonging to the Corporation. In the event that a Chief Financial Officer is elected and then serving in lieu of a Treasurer, the Chief Financial Officer shall carry out the duties, and hold the powers, of the Treasurer, along with such other duties, rights and powers as from time to time may be delegated or prescribed by the Board of Directors or the Chief Executive Officer, if there be one, or the President, in the absence of a Chief Executive Officer, under whose supervision (as the case may be) he shall be.

Section 8. Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose. The Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be assigned from time to time by the Board of Directors or the Chief Executive Officer, if there be one, or the President, in the absence of a Chief Executive Officer, under whose supervision (as the case may be) he shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, then either the Board of Directors or the Chief Executive Officer, if there be one, or the President, in the absence of a Chief Executive Officer, may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary. The Secretary shall have the power and authority to execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed without seal. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 9. Other Officers. Such other officers as the Board of Directors may choose and elect or appoint from time to time shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose and appoint such other officers and to prescribe their respective duties, authorities and powers.

## **ARTICLE IV**

### **STOCK**

Section 1. Form of Certificates. The shares of stock of the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any class or series shall be uncertificated shares that may be evidenced by a book-entry system maintained by the registrar of such stock. If shares are represented by certificates, such certificates shall be in the form, other than bearer form,

approved by the Board of Directors. The certificates representing shares of stock of each class shall be signed by, or in the name of, the Corporation by the chairman, any vice chairman, the president or any vice president, and by the secretary, any assistant secretary, the treasurer or any assistant treasurer. Any or all such signatures may be facsimiles. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

Section 2. Signatures. Where a certificate is countersigned by (i) a transfer agent other than the Corporation or its employee, or (ii) a registrar other than the Corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or his legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond or other indemnification commitments in such amount(s) as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by his attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued. Subject to the Listing Rules, the Corporation may charge a fee for registering a transfer of stock. The Corporation (or the Corporation's securities registry) may put in place, and require compliance with, reasonable processes and procedures in connection with determining the authenticity of an instrument of transfer, notwithstanding that this may prevent, delay or interfere with the registration of the relevant instrument of transfer.

Section 5. Record Date. In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, or entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor less than ten days before the date of such meeting. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, that the Board of Directors may fix a new record date for the adjourned meeting.

Section 6. Beneficial Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by law.

Section 7. Restricted Securities. For the purposes of this section, “**Dispose**” shall have the meaning given in the Listing Rules and “**Disposal**” shall have the corresponding meaning. In connection with the Corporation’s closing of an initial public offering pursuant to a prospectus under the Australian Corporations Act 2001 (Cth), covering the offers of securities of the Corporation received in Australia of CHESS Depository Interests (each a “**CDI**”) (with each CDI representing an interest in one share of Class A Common Stock), certain stockholders of the Corporation were or will be required by the ASX to enter into a restriction agreement (each a “**Mandatory Escrow Agreement**”) with the Corporation under which the stockholder agreed, among other things, to, or the Corporation was or will be required by the ASX to issue a restriction notice (each a “**Mandatory Escrow Notice**”) to certain stockholders of the Corporation pursuant to which the Corporation notified the stockholder of, certain restrictions and prohibitions from engaging in transactions in the shares of Class A Common Stock (including Class A Common Stock in the form of CDIs) held or acquired by the stockholder (including shares of Class A Common Stock that may be acquired upon exercise of a stock option, warrant or other right) or shares of Class A Common Stock which attach to or arise from such Class A Common Stock (collectively, the “**Restricted Securities**”) for a period of time identified in the Mandatory Escrow Agreement or the Mandatory Escrow Notice (as the case may be) (the “**Lock Up Period**”). The Restricted Securities shall automatically and without further action be converted into shares of Class B Common Stock, on a one for-one basis, if the Board of Directors determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder's Mandatory Escrow Agreement or Mandatory Escrow Notice or breached the Listing Rules, Certificate of Incorporation or this Section 7 relating to the Restricted Securities. Any shares of Class A Common Stock converted to Class B Common Stock pursuant to this Section 7 shall automatically and without further action be converted back into shares of Class A Common Stock, on a one-for-one basis, upon the earlier to occur of the expiration of the Lock Up Period in the applicable Mandatory Escrow Agreement or Mandatory Escrow Notice (as the case may be) which applied to the shares of Class A Common Stock that were originally converted to Class B Common Stock or the breach of the Mandatory Escrow Agreement, the Mandatory Escrow Notice, the Listing Rules, the Certificate of Incorporation or this Section 7 relating to the Restricted Securities being remedied. A holder of Restricted Securities cannot Dispose of, or agree or offer to Dispose of, their Restricted Securities during the Lock Up Period attached to those Restricted Securities except as permitted by the Listing Rules or ASX. If the Restricted Securities are in the same class as the Corporation’s quoted securities, the stockholder will be taken to have agreed in writing that the Restricted Securities are to be kept on the Corporation’s issuer sponsor subregister (as defined by the Listing Rules) and are to have a holding lock (as defined by the Listing Rules) applied for the duration of the Lock Up Period attached to those Restricted Securities. Except as permitted by the Listing Rules or ASX, the Board of Directors will refuse to acknowledge any Disposal (including, without limitation, registering a transfer) of Restricted Securities during the Lock Up Period for those Restricted Securities. A holder of Restricted Securities will not be entitled to participate in any

return of capital on the Restricted Securities during the Lock Up Period applicable to those Restricted Securities except as permitted by the Listing Rules or ASX.

## **ARTICLE V**

### **NOTICES**

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at his address as it appears in the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given five days after the same shall be deposited in the United States mail. Written notice may also be given personally or by e-mail, facsimile, telex or cable to such person's or entity's e-mail address, or facsimile, telex or cable number, if any, provided by such person or entity to, or as set forth in the records of, the Corporation.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these Bylaws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

## **ARTICLE VI**

### **INDEMNIFICATION**

Section 1. Power to Indemnify in Actions, Suits or Proceedings other Than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VI and the Certificate of Incorporation, the Corporation shall indemnify any officer or director of the Corporation, and may, in the discretion of the Board of Directors, indemnify any employee or an agent of the Corporation, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that such person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, have reasonable cause to believe that such person's conduct was unlawful.

Section 2. Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VI, the Corporation shall indemnify any officer or director of the Corporation, and may in the discretion of the Board of Directors, indemnify any employee or agent of the Corporation, who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matters as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Authorization of Indemnification. Any indemnification under this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because the person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VI, as the case may be. Any indemnification under this Article VI (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of an employee or an agent, as the case may be, is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VI, as the case may be. Such determination shall be made (i) by a majority vote of the directors who were not parties to such action, suit or proceeding even though less than a quorum, or (ii) if there are no such directors, or, if such directors so direct, by independent legal counsel in a written opinion, or (iii) by the stockholders. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 4. Good Faith Defined. For purposes of any determination under Section 3 of this Article VI, a person shall be deemed to have acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe their conduct was unlawful, if their action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to them by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an

appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The term “another enterprise” as used in this Section 4 of this Article VI shall mean any other corporation or any partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. The provisions of this Section 4 of this Article VI shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or 2 of this Article VI, as the case may be.

Section 5. Indemnification by the Court of Chancery. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VI, and notwithstanding the absence of any determination thereunder, any officer or director may apply to the Court of Chancery for indemnification to the extent otherwise permissible under Sections 1 and 2 of this Article VI. The basis of such indemnification by the Court of Chancery shall be a determination by such court that indemnification of the officer or director is proper in the circumstances because such person has met the applicable standards of conduct set forth in Sections 1 or 2 of this Article VI, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VI nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the officer or director seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 of this Article VI shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the officer or director seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 6. Expenses Payable in Advance. Expenses (including attorney’s fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding 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 officer or director to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VI. Payment by the Corporation of such expenses (including attorneys’ fees) incurred by former directors and officers or other employees and agents may be further limited by such other terms and conditions, if any, as the Corporation deems appropriate.

Section 7. Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by or granted pursuant to this Article VI shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, contract, vote of stockholders or disinterested directors or pursuant to the direction (howsoever embodied) of any court of competent jurisdiction or otherwise, both as to action in such person’s official capacity and as to action in another capacity while holding such office. The provisions of this Article VI shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or 2 of this Article VI but whom the Corporation has the power or obligation to indemnify under the provisions of the General Corporation Law, or otherwise.

Section 8. Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, against any liability asserted against such person and incurred by such person in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VI.

Section 9. Certain Definitions. For purposes of this Article VI, references to “the Corporation” shall include, in addition to the resulting entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its officers or directors, so that any such person who is or was a director, officer, employee or agent of such constituent entity, or is or was serving at the request of such constituent entity as a director, manager, officer, employee or agent of another corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise, shall stand in the same position under the provisions of this Article VI with respect to the resulting or surviving entity as such person would have with respect to such constituent entity if its separate existence had continued. For purposes of this Article VI, references to “fines” shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article VI.

Section 10. Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI shall, unless otherwise provided when authorized or ratified, or by contract, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such person. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VI may, unless otherwise provided when authorized or ratified, or by contract, continue as to a person who has ceased to be an employee or an agent and shall inure to the benefit of the heirs, executors and administrators of such person.

Section 11. Limitation of Indemnification. Notwithstanding anything contained in this Article VI to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VI), the Corporation shall not be obligated to indemnify any director officer, employee or agent in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.



Section 12. Conflict with Certificate of Incorporation. The indemnification provisions contained in these Bylaws are not intended to limit in any respect the indemnification provisions contained in the Certificate of Incorporation. In the event of any conflict between the terms of the Certificate of Incorporation and the Bylaws with respect to indemnification, the terms of the Certificate of Incorporation shall govern.

## **ARTICLE VII**

### **AMENDMENTS**

Section 1. Amendments Generally. Except as otherwise provided by law or in the Certificate of Incorporation, these Bylaws may be altered, amended or repealed, in whole or in part, or new Bylaws may be adopted by the stockholders or by the Board of Directors, provided, that notice of such alteration, amendment, repeal or adoption of new Bylaws be contained in the notice of such meeting of stockholders or Board of Directors, as the case may be. All such amendments must be approved by stockholders holding a majority (by number of votes) of the outstanding capital stock entitled to vote thereon, or by a majority of the directors then in office.

Section 2. Entire Board of Directors. As used in this Article VII and in these Bylaws generally, the term “entire Board of Directors” means the total number of directors which the Corporation would have if there were no vacancies.

## **ARTICLE VIII**

### **GENERAL PROVISIONS**

Section 1. Dividends. Dividends upon the capital stock of the Corporation, if any, may, subject to the provisions of the Certificate of Incorporation, be declared by the Board of Directors at any regular or special meeting, and may be paid in cash, in property, or in shares of the capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by the resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal of the Corporation (if any) shall have inscribed thereon the name of the Corporation, the year of its organization and the words “Corporate Seal, Delaware.” The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE IX

### ASX LISTING RULES

Section 1. ASX Listing Rules. If the Corporation is admitted to the official list of ASX, the following clauses apply:

- a) Notwithstanding anything contained in these Bylaws or the Certificate of Incorporation, if the Listing Rules prohibit an act being done, the act shall not be done.
- b) Nothing contained in these Bylaws or the Certificate of Incorporation prevents an act being done that the Listing Rules require to be done.
- c) If the Listing Rules require an act to be done or not to be done, authority is given for that act to be done or not to be done (as the case may be).
- d) If the Listing Rules require these Bylaws or the Certificate of Incorporation to contain a provision and it does not contain such a provision, these Bylaws or the Certificate of Incorporation (as the case may be) is deemed to contain that provision.
- e) If the Listing Rules require these Bylaws or the Certificate of Incorporation not to contain a provision and it contains such a provision, these Bylaws or the Certificate of Incorporation is deemed not to contain that provision.
- f) If any provision of these Bylaws or the Certificate of Incorporation is or becomes inconsistent with the Listing Rules, these Bylaws or the Certificate of Incorporation is deemed not to contain that provision to the extent of the inconsistency.

For the purposes of these By-Laws:

“**ASX**” means ASX Limited ACN 008 624 691 or the market it operates, as the context requires.

“**Listing Rules**” means the Listing Rules of ASX and any other rules of ASX which are applicable while the Corporation is admitted to the official list of ASX, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX.

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