

**FOURTH AMENDED AND RESTATED  
BY-LAWS OF SPECTRA SYSTEMS CORPORATION**

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**ARTICLE I**

**OFFICES**

**Section 1. Registered Office.** The registered office of the corporation in the State of Delaware shall be in the City of Wilmington, County of New Castle. The corporation's resident agent as of the adoption of these By-laws shall be Corporation Service Company, 2711 Centerville Road, Suite 400, Wilmington, Delaware 19808. The Board of Directors has the authority to change the resident agent without amendment to these By-laws.

**Section 2. Other Offices.** The corporation shall also have and maintain an office or principal place of business at such place as may be fixed by the Board of Directors, and may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine or the business of the corporation may require.

**ARTICLE II**

**CORPORATE SEAL**

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

**ARTICLE III**

**STOCKHOLDERS' MEETINGS**

**Section 1. Place of Meetings.** Meetings of the stockholders of the corporation may be held at such place, either within or without the State of Delaware, as the Board of Directors may determine as from time to time. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the Delaware General Corporation Law (the "DGCL").

**Section 2. Annual Meeting.**

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

stockholder of record at the time of giving of notice provided for in the following paragraph, who is entitled to vote at the meeting and who complied with the notice procedures set forth in this Section 2.

**(b)** At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 2(a)(iii) of this Article III, **(i)** the stockholder must have given timely notice thereof in writing to the Secretary of the corporation, **(ii)** such other business must be a proper matter for stockholder action under the DGCL, **(iii)** if the stockholder, or the beneficial owner on whose behalf any such proposal or nomination is made, has provided the corporation with a Solicitation Notice (as defined in this Section 2(b)), such stockholder or beneficial owner must, in the case of a proposal, have delivered a proxy statement and form of proxy to holders of at least the percentage of the corporation's voting shares required under applicable law to approve any such proposal, or, in the case of a nomination or nominations, have delivered a proxy statement and form of proxy to holders of a percentage of the corporation's voting shares reasonably believed by such stockholder or beneficial owner to be sufficient to elect the nominee or nominees proposed to be nominated by such stockholder, and must, in either case, have included in such materials the Solicitation Notice, and **(iv)** if no Solicitation Notice relating thereto has been timely provided, the stockholder or beneficial owner proposing such business or nomination must not have solicited a number of proxies sufficient to have required the delivery of such a Solicitation Notice under this Section 2. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; *provided, however*, that in the event that the date of the annual meeting is advanced more than 30 days prior to or delayed by more than 30 days after the anniversary of the preceding year's annual meeting, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement of the date of such meeting is first made. In no event shall the public announcement of an adjournment of an annual meeting commence a new time period for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: **(i)** as to each person whom the stockholder proposed to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "1934 Act"), and Rule 14a-11, as amended, thereunder (including such person's written consent to being named in the proxy statement as a nominee and to serve as a director if elected); **(ii)** as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and **(iii)** as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made, **(A)** the name and address of such stockholder, as they appear on the corporation's books, and of such beneficial owner, **(B)** the class and number of shares of the corporation which are owned beneficially and of record by such stockholder and such beneficial owner, and **(C)** whether either such stockholder or beneficial owner intends to deliver a proxy statement and form of proxy to holders of, in the case of the proposal, at least the percentage of the corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the corporation's voting

shares to elect such nominee or nominees (an affirmative statement of such intent, a "Solicitation Notice").

(c) Notwithstanding anything in the second sentence of Section 2(b) of this Article III to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation is increased and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board of Directors made by the corporation at least 100 days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the corporation not later than the close of business on the tenth day following the day on which such public announcement is first made by the corporation.

(d) Only such persons who are nominated in accordance with the procedures set forth in this Section 2 shall be eligible to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2. Except as otherwise provided by law, the Chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made, or proposed, as the case may be, in accordance with the procedures set forth in these By-laws and, if any proposed nomination or business is not in compliance with these By-laws, to declare that such defective proposal or nomination shall not be presented for stockholder action at the meeting and shall be disregarded.

(e) Notwithstanding the foregoing provisions of this Section 2, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholders' meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. Nothing in these By-laws shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation proxy statement pursuant to Rule 14a-8, as amended, under the 1934 Act.

### **Section 3. Special Meetings.**

(a) Special meetings of the stockholders of the corporation may be called, for any purpose or purposes, by (i) the President, (ii) the Secretary or (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), and shall be held at such place, on such date, and at such time as the Board of Directors shall fix.

(b) If no directors are currently in office, a special meeting of the stockholders of the corporation may be called, for the purpose of electing members to the Board of Directors, by any officer of the corporation or any stockholder or group of stockholders then holding at least ten percent (10%) of the then-outstanding shares of Common Stock.

(c) If a special meeting is properly called by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by certified or registered mail, return receipt requested, or by facsimile transmission (with evidence of receipt) to the Chairman of the Board of Directors, the Chief Executive Officer, or the Secretary of the

corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors, unless none are then in office, shall determine the time and place of such special meeting, which shall be held not less than 35 nor more than 120 days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 4 of this Article III. Nothing contained in this Section 3(c) shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

**Section 4. Notice of Meetings.** Except as otherwise provided by law or the corporation's Certificate of Incorporation, as amended, notice, given in writing or by electronic transmission, of each meeting of stockholders shall be given not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date and hour and purpose or purposes of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. Notice of the time, place, if any, and purpose of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof or by electronic transmission by such person, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person, by remote communication, if applicable, or by proxy, except when the stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 5. Quorum.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, as amended, or by these By-laws, the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by statute, or by the Certificate of Incorporation, as amended, or these By-laws:

(a) in all matters other than the election of directors, the affirmative vote of a majority of shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders;

(b) directors shall be elected by a plurality of the votes of the shares present in person, by remote communication, if applicable, or represented by proxy duly authorized at the meeting and entitled to vote generally on the election of directors;

(c) the affirmative vote of the majority (plurality, in the case of the election of directors) of shares of such class or classes or series present in person, by remote communication, if applicable, or represented by proxy at the meeting, shall be the act of such class or classes or series; and

(d) where a separate vote by a class or classes or series is required, a majority of the outstanding shares of such class or classes or series, present in person, by remote communication, if applicable, or represented by proxy duly authorized, shall constitute a quorum entitled to take action with respect to that vote on that matter.

**Section 6. Adjournment and Notice of Adjourned Meetings.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares present in person, by remote communication, if applicable, or represented by proxy. When a meeting is adjourned to another time or place, if any, notice need not be given of the adjourned meeting if the time and place, if any, thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 30 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 7. Voting Rights.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 9 of this Article III, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person, by remote communication, if applicable, or by an agent or agents authorized by a proxy granted in accordance with Delaware law. An agent so appointed need not be a stockholder. No proxy shall be voted after five years from its date of creation unless the proxy provides for a longer period.

**Section 8. Joint Owners of Stock.** If shares or other securities having voting power stand of record in the names of two or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect:

(a) if only one votes, his act binds all;

(b) if more than one votes, the act of the majority so voting binds all;

(c) if more than one votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the DGCL, Section 217(b).

If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of subsection (c) of this Section 8 shall be a majority or even-split in interest.

**Section 9. List of Stockholders.** The Secretary shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, on a reasonably

accessible electronic network (provided that the information required to gain access to such list is provided with the notice of the meeting), or during ordinary business hours, at the principal place of business of the corporation. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. The list shall be open to examination of any examination of any stockholder during the time of the meeting as provided by law produced and kept at the time and place of meeting during the whole time thereof and may be inspected by any stockholder who is present.

#### **Section 10. Action without Meeting.**

**(a)** Unless otherwise provided in the Certificate of Incorporation, as amended, any action required by statute to be taken at any annual or special meeting of the stockholders, or any action which may be taken at any annual or special meeting of the stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent in writing, or by electronic transmission setting forth the action so taken, shall be 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.

**(b)** Every written consent or electronic transmission shall bear the date of signature of each stockholder who signs the consent, and no written consent or electronic transmission shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest dated consent delivered to the corporation in the manner herein required, written consents or electronic transmissions signed by a sufficient number of stockholders to take action are delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

**(c)** 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 or by electronic transmission and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of stockholders to take action were delivered to the corporation as provided in Section 228(c) of the DGCL. If the action which is consented to is such as would have required the filing of a certificate under any section of the DGCL if such action had been voted on by stockholders at a meeting thereof, then the certificate filed under such section shall state, in lieu of any statement required by such section concerning any vote of stockholders, that written consent has been given in accordance with Section 228 of the DGCL.

**(d)** An e-mail or electronic transmission consenting to an action to be taken and transmitted by a stockholder or proxyholder, shall be deemed to be written, signed and dated for the purposes of this Section 10, *provided* that any such e-mail or electronic transmission sets forth or is delivered with information from which the corporation can determine **(i)** that the e-mail or electronic transmission was transmitted by the stockholder or proxyholder or by a person or persons authorized to act for the stockholder and **(ii)** the date on which such stockholder or proxyholder or authorized person or persons transmitted such e-mail or electronic transmission. The date on which such e-mail or electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Notwithstanding the foregoing limitations on delivery, consents given by e-mail or electronic transmission may be otherwise delivered to the

principal place of business of the corporation or to an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded if, to the extent and in the manner provided by resolution of the board of directors of the corporation. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, *provided* that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

#### **Section 11. Organization.**

**(a)** At every meeting of stockholders, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or, if the President is absent, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

**(b)** The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

## ARTICLE IV

### DIRECTORS

**Section 1. Number and Term of Office.** The business of the corporation shall be managed by its Board of Directors, which may exercise all powers of the corporation and perform all lawful acts that are not, by law, the Certificate of Incorporation, as amended, or these By-laws directed or required to be exercised or performed by the stockholders. The authorized number of directors of the corporation shall be seven; *provided, however*, that the Board of Directors have the authority to increase or decrease the number of the Directors of the corporation (but not to fewer than the number of Directors then in office). Directors need not be stockholders unless so required by the Certificate of Incorporation. If for any cause, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient.

**Section 2. Powers.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 3. Term of Directors.** Subject to the rights of the holders of any series of Preferred Stock to elect additional directors under specified circumstances, directors shall be elected at each annual meeting of stockholders for a term of one year. Each director shall serve until his successor is duly elected and qualified or until his death, resignation or removal. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

**Section 4. Vacancies.** Unless otherwise provided in the Certificate of Incorporation, as amended, and subject to the rights of the holders of any series of Preferred Stock, any vacancies on the Board of Directors resulting from death, resignation, disqualification, removal or other causes and any newly created directorships resulting from any increase in the number of directors shall, unless the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by the affirmative vote of a majority of the directors then in office, even though less than a quorum of the Board of Directors. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this By-law in the case of the death, removal or resignation of any director.

**Section 5. Resignation.** Any director may resign at any time by delivering notice in writing or by electronic transmission to the Board of Directors, the Chairman of the Board, if any, or the President or Secretary. Unless otherwise specified in such notice, a resignation shall take effect on delivery thereof to the Board of Directors or the designated officer. It shall not be necessary for a resignation to be accepted before it becomes effective. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office for the unexpired portion of the term of the Director whose place shall be vacated and until his successor shall have been duly elected and qualified.

**Section 6. Removal.** Subject to any limitations imposed by applicable law, the Board of Directors or any director may be removed from office at any time by **(i)** the affirmative vote of the holders of a majority of the then-outstanding shares of capital stock of the corporation, entitled to vote generally at an election of directors; or **(ii)** for cause, by the affirmative vote or consent of at least two thirds of the other members of the Board of Directors.

**Section 7. Meetings.**

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

**(b) Special Meetings.** Unless otherwise restricted by the Certificate of Incorporation, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President, the Secretary or any two directors.

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

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

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

**Section 8. Quorum and Voting.**

**(a)** Unless the Certificate of Incorporation, as amended, requires a greater number, a quorum of the Board of Directors shall consist of a majority of the exact number of

directors fixed from time to time by the Board of Directors in accordance with the Certificate of Incorporation, as amended; *provided, however*, at any meeting, whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

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

**Section 9. Action without Meeting.** Unless otherwise restricted by the Certificate of Incorporation, as amended, or these By-laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board of Directors or committee, as the case may be, consent thereto in writing or by electronic transmission, and such writing or writings or transmission or transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

**Section 10. Fees and Compensation.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

#### **Section 11. Committees.**

(a) **Executive Committee.** The Board of Directors may appoint an Executive Committee to consist of one or more members of the Board of Directors. The Executive Committee, to the extent permitted by law and provided in the resolution of the Board of Directors shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation, and may authorize the seal of the corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (i) approval or adoption, or recommendation to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval, or (ii) adoption, amendment or repeal of any By-law of the corporation.

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

(c) **Term.** The Board of Directors, subject to any requirements of any outstanding series of Preferred Stock, the provisions of subsections (a) or (b) of this Section 11 may at any time increase or decrease the number of members of a committee or terminate the

existence of a committee. The membership of a committee member shall terminate on the date of his death or voluntary resignation from the committee or from the Board of Directors. The Board of Directors may, at any time for any reason, remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

**(d) Meetings.** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 11 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Unless otherwise provided by the Board of Directors in the resolutions authorizing the creation of the committee, a majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 12. Organization.** At every meeting of the directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed or is absent, the President, or if the President is absent, the most senior Vice President (if a director) or, in the absence of any such person, a chairman of the meeting chosen by a majority of the directors present, shall preside over the meeting. The Secretary, or in his absence, any Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

## **ARTICLE V**

### **OFFICERS**

**Section 1. Officers Designated.** The officers of the corporation shall include, if and when designated by the Board of Directors, the Chairman of the Board of Directors, the President, one or more Vice Presidents, the Secretary, the Chief Financial Officer, the Treasurer and the Controller, all of whom shall be elected at the annual organizational meeting of the Board of Directors. The Board of Directors may also appoint one or more Assistant Secretaries, Assistant Treasurers, Assistant Controllers and such other officers and agents with such powers and duties as it shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as it shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by

law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

## **Section 2. Tenure and Duties of Officers.**

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

**(b) Duties of Chairman of the Board of Directors.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the stockholders and the Board of Directors. The Chairman of the Board of Directors shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. If there is no President, then the Chairman of the Board of Directors shall also serve as the Chief Executive Officer of the corporation and shall have the powers and duties prescribed in paragraph (c) of this Section 2.

**(c) Duties of President.** The President, if he is a Director of the corporation, shall preside at all meetings of the stockholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. Unless some other officer has been elected Chief Executive Officer of the corporation, the President shall be the chief executive officer of the corporation and shall, subject to the control of the Board of Directors, have general supervision, direction and control of the business and officers of the corporation. The President shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

**(d) Duties of Vice Presidents.** The Vice Presidents may assume and perform the duties of the President in the absence or disability of the President or whenever the office of President is vacant. The Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

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

**(f) Duties of Chief Financial Officer.** The Chief Financial Officer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as

required by the Board of Directors or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct the Treasurer or any Assistant Treasurer, or the Controller or any Assistant Controller to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer and each Controller and Assistant Controller shall perform other duties commonly incident to the office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time

**Section 3. Delegation of Authority.** The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

**Section 4. Resignations.** Any officer may resign at any time by giving notice in writing or by electronic transmission notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**Section 5. Removal.** Any officer may be removed from office at any time, either with or without cause, by the affirmative vote of a majority of the directors in office at the time, or by the unanimous written consent of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

## ARTICLE VI

### EXECUTION OF CORPORATE INSTRUMENTS AND VOTING

#### OF SECURITIES OWNED BY THE CORPORATION

**Section 1. Execution of Corporate Instruments.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these By-laws, and such execution or signature shall be binding upon the corporation. All checks and drafts drawn on banks or other depositories on funds to the credit of the corporation or in special accounts of the corporation shall be signed by such person or persons as the Board of Directors shall authorize so to do. Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 2. Voting of Securities Owned by the Corporation.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in

any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman of the Board of Directors, the Chief Executive Officer, the President, or any Vice President.

## ARTICLE VII

### SHARES OF STOCK

**Section 1. Form and Execution of Certificates.** Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation, as amended, and applicable law. Every holder of stock in the corporation shall be entitled to have a certificate signed by or in the name of the corporation by the Chairman of the Board of Directors, or the President or any Vice President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. Any or all of the signatures on the certificate may be facsimiles. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Each certificate shall state upon the face or back thereof, in full or in summary, all of the powers, designations, preferences, and rights, and the limitations or restrictions of the shares authorized to be issued or shall, except as otherwise required by law, set forth on the face or back a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative, participating, optional, or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights, and shall bear such legends and statements as the Board of Directors deems appropriate in connection with the requirements of federal or state securities laws or other applicable laws. Within a reasonable time after the issuance or transfer of uncertificated stock, the corporation shall send to the registered owner thereof a written notice containing the information required to be set forth or stated on certificates pursuant to this Section 1 or otherwise required by law or with respect to this Section a statement that the corporation will furnish without charge to each stockholder who so requests the powers, designations, preferences and relative participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

**Section 2. Lost Certificates.** A new certificate or certificates shall be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or the owner's legal representative, to agree to indemnify the corporation in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen, or destroyed.

### **Section 3. Transfers.**

(a) Transfers of record of shares of stock of the corporation shall be made only upon its books by the holders thereof, in person or by attorney duly authorized, upon the

surrender of a properly endorsed certificate or certificates for a like number of shares, and, if applicable, in accordance with the provisions of Article XIV, Section 5(a) herein.

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

#### **Section 4. Fixing Record Dates.**

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

(b) In order that the corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the

record date is adopted, and which record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

**Section 5. Registered Stockholders.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

## ARTICLE VIII

### OTHER SECURITIES OF THE CORPORATION

**Section 1. Execution of Other Securities.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board of Directors, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Chief Financial Officer or Treasurer or an Assistant Treasurer; *provided, however,* that where any such bond, debenture or other corporate security shall be authenticated by the manual signature, or where permissible facsimile signature, of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## ARTICLE IX

### DIVIDENDS

**Section 1. Declaration of Dividends.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, as amended, and applicable law, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation, as amended, and applicable law.

**Section 2. Dividend Reserve.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of

Directors from time to time, in its absolute discretion, thinks proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

## ARTICLE X

### FISCAL YEAR

The fiscal year of the corporation shall be fixed by resolution of the Board of Directors.

## ARTICLE XI

### INDEMNIFICATION

#### **Section 1. Indemnification of Directors, Executive Officers, Other Officers, Employees and Other Agents.**

**(a) Directors and Officers.** The corporation shall indemnify its directors and officers to the fullest extent not prohibited by the DGCL or any other applicable law; *provided, however,* that the corporation may modify the extent of such indemnification by individual contracts with its directors and officers; and, *provided, further,* that the corporation shall not be required to indemnify any director or officer in connection with any proceeding (or part thereof) initiated by such person unless **(i)** such indemnification is expressly required to be made by law, **(ii)** the proceeding was authorized by the Board of Directors of the corporation, **(iii)** such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law or any other applicable law or **(iv)** such indemnification is required to be made under subsection (d) of this Section 1.

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

**(c) Expenses.** The corporation shall advance to any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that he is or was a director or officer, of the corporation, or is or was serving at the request of the corporation as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, prior to the final disposition of the proceeding, promptly following request therefor, all expenses incurred by any director or officer in connection with such proceeding, provided, however, that, if the DGCL requires, an advancement of expenses incurred by a director or officer in his or her capacity as a director or officer (and not in any other capacity in which service was or is rendered by such indemnitee, including, without limitation, service to an employee benefit plan) shall be made only upon delivery to the corporation of an undertaking, by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such indemnitee is not entitled to be indemnified for such expenses under this Section 1 or otherwise. Notwithstanding the foregoing, unless otherwise determined pursuant to paragraph (e) of this

Section 1, no advance shall be made by the corporation to an officer of the corporation (except by reason of the fact that such officer is or was a director of the corporation, in which event this paragraph shall not apply) in any action, suit or proceeding, whether civil, criminal, administrative or investigative, if a determination is reasonably and promptly made:

(i) a majority vote of a quorum consisting of directors who were not parties to the proceeding, even if not a quorum, or

(ii) by a committee of such directors designated by a majority of such directors, even though less than a quorum, or

(iii) if there are no such directors, or such directors so direct, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**(d) Enforcement.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and officers under this By-law shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or officer. Any right to indemnification or advances granted by this By-law to a director or officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within 90 days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall be entitled to be paid also the expense of prosecuting the claim. In connection with any claim for indemnification, the corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the DGCL or any other applicable law for the corporation to indemnify the claimant for the amount claimed. In connection with any claim by an officer of the corporation (except in any action, suit or proceeding, whether civil, criminal, administrative or investigative, by reason of the fact that such officer is or was a director of the corporation) for advances, the corporation shall be entitled to raise a defense as to any such action clear and convincing evidence that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation, or with respect to any criminal action or proceeding that such person acted without reasonable cause to believe that his conduct was lawful. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he has met the applicable standard of conduct set forth in the DGCL or any other applicable law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct. In any suit brought by a director or officer to enforce a right to indemnification or to an advancement of expenses hereunder, the burden of proving that the director or officer is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the corporation.

**(e) Non-Exclusivity of Rights.** The rights conferred on any person by this By-law shall not be exclusive of any other right which such person may have or hereafter acquire under any applicable statute, provision of the Certificate of Incorporation, as amended, By-laws,

agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the DGCL or any other applicable law.

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

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

**(h) Amendments.** Any repeal or modification of this By-law shall only be prospective and shall not affect the rights under this By-law in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**Section 2. Saving Clause.** If this Article or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and officer to the full extent not prohibited by any applicable portion of this Article that shall not have been invalidated, or by any other applicable law. If this Article shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the corporation shall indemnify each director and officer to the full extent under applicable law.

**Section 3. Certain Definitions.** For the purposes of this Article, the following definitions shall apply:

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

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

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

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

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

## ARTICLE XII

### NOTICES

**Section 1. Notices to Stockholders.** Whenever, under any provisions of these By-laws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent or, if a stockholder has consented in writing to such means, by any other means (including by e-mail).

**Section 2. Notice to Directors.** Any notice required to be given to any director may be given by the method stated in Section 1 of this Article XII, or as provided for in Article IV, Section 7, of these By-laws. If such notice is not delivered personally, it shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director.

**Section 3. Affidavit of Mailing.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected or other agent, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall in the absence of fraud, be prima facie evidence of the facts therein contained.

**Section 4. Methods of Notice.** It shall not be necessary that the same method of giving notice be employed in respect of all recipients of notice, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**Section 5. Notice to Person with Whom Communication Is Unlawful.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation, as amended, or By-laws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the

filing of a certificate under any provision of the DGCL, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

### ARTICLE XIII

#### AMENDMENTS

The Board of Directors is expressly empowered to adopt, amend or repeal By-laws of the corporation. The stockholders shall also have power to adopt, amend or repeal the By-laws of the corporation; *provided, however*, that, in addition to any vote of the holders of any class or series of stock of the corporation required by law or by this Certificate of Incorporation, as amended, the affirmative vote of the holders of at least a two thirds of the voting power of all of the then-outstanding shares of the capital stock of the corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to adopt, amend or repeal any provision of the By-laws.

### ARTICLE XIV

#### PROVISIONS RELATED TO THE CORPORATION'S LISTING ON AIM, A MARKET OF THE LONDON STOCK EXCHANGE

This Article shall be applicable only to the extent that and so long as the corporation is subject to the rules and regulations of the London Stock Exchange.

**Section 1. Definitions.** For the purposes of this Article XIV, the following definitions shall apply:

**"Admission"** means admission of the entire issued and to be issued share capital of the corporation to trading on AIM becoming effective (pursuant to Rule 6 of the AIM Rules);

**"acting in concert"** means actively co-operating, pursuant to an agreement or understanding (whether formal or informal), through the acquisition of securities of the corporation, to obtain or consolidate Control;

**"AIM"** means AIM, a market operated by LSE;

**"AIM Rules"** means the AIM Rules for Companies (February 2010);

**"allot"** means the issue, allotment or sale by the corporation of New Securities not issued as of the date of adoption of these amended and restated By-laws of the corporation as the case may be in accordance with the Applicable Corporation Statute (and **"allotment"** shall be construed accordingly);

**"Applicable Corporation Statute"** means the Delaware General Corporation Law;

**"Board"** means the Board of Directors of the corporation;

**"Control"** means an interest or aggregate interests in Shares carrying thirty percent (30%) or more of the Voting Rights, irrespective of whether the interest or interests give de facto control;

**"Director"** means any member of the Board;

**"Disclosure Notice"** means a notice issued by the corporation requiring the disclosure of interests in shares;

**"Employees' Shares Scheme"** means a scheme or plan for encouraging or facilitating the holding of Shares or options or debentures in the corporation by or for the benefit of:

- (a) the bona fide employees, Directors, or consultants or former employees, Directors or consultants of the corporation, the corporation's subsidiaries; or
- (b) the wives, husbands, widows, widowers or children or step-children under the age of 18 of such employees or former employees;

**"holding"** (when used in Section 4 in the context of a Person's Notifiable Interest) means a Person's legal or beneficial interest, whether direct or indirect, in Shares (including holdings by the family of such Person) and including positions in financial instruments (as the terms 'family' and 'financial instruments' are defined in the AIM Rules);

**"interest"** has the same meaning as set out in section 820 of the UK Companies Act 2006;

**"LSE"** means London Shares Exchange plc;

**"New Securities"** means any Shares, whether now or hereafter authorized, other than:

- (a) Shares which, regarding dividends and capital, carry a right to participate only up to a specified amount in a distribution;
- (b) Shares which are held by a Person who acquired them pursuant to an Employees' Shares Scheme or, in the case of Shares which have not been allotted, are to be allotted pursuant to such a scheme; or
- (c) a right to subscribe for, or convert securities into, such Shares as are referred to in (a) and (b) above (but excluding the allotment of Shares pursuant to any such convertible security, option, warrant or other right) and convertible securities including rights, options or warrants to purchase such Shares;

**"Non-US Person"** means any Person that is not a "U.S. person" as defined in Regulation S;

**"Notifiable Interest"** means any time when a Person has a holding equal to or more than three percent (3%) of the aggregate outstanding Shares;

**"Offer"** means a written offer made in accordance with Article XIV, Sections 2(c) and 2(e) to 2(i) and may, subject to Article XIV, Sections 2(c) and 2(e) to 2(i), include an offer to consummate a takeover, merger or consolidation transaction, however effected, including a reverse takeover, partial offer, tender offer, Court scheme (including a plan of reorganization under insolvency or bankruptcy laws), or offer by a parent company for shares in its subsidiary;

**"Offeror"** has the meaning given to it in Article XIV, Section 2(c) and includes Persons wherever organized or resident;

**"Offer Period"** means the period from the time when an announcement is made of a proposed or possible Offer (with or without terms) until the first closing date or, if later, the date when the Offer becomes or is declared unconditional as to acceptances or lapses. An announcement that an interest, or interests, in Shares carrying in aggregate thirty percent (30%) or more of the Voting Rights is for sale or that the Board is seeking potential Offerors will be treated as the announcement of a possible Offer for purposes of determining the applicable Offer Period;

**"Operator"** means any Person who is a Shareholder by virtue of its holding Shares as trustee on behalf of those who have elected to hold Shares through a depository interest;

**"Person"** means any individual, firm, partnership, association, limited liability company or other entity;

**"Pro Rata Share"** means, in relation to a Shareholder, that number of Shares which is in the same proportion as the number of Shares held by such Shareholder bears to the total number of Shares in issue, in each case as at the date of the Rights Notice;

**"Prohibited Person "** means any Person either (a) listed on the U.S. Office of Foreign Assets Control's "Specially Designated Nationals" list or list of target countries, the U.S. Department of Commerce, Bureau of Industry and Security's Denied Persons List or Entities List, the Federal Bureau of Investigation's Most Wanted List or any other FBI-issued watch list, the Office of Defense Trade Controls' Debarred Parties list, or the U.S. Department of the Treasury's Blocked Persons List; or (b) resident or organized in any country subject to a U.S. Office of Foreign Assets Control sanctions program, as determined from time to time;

**"public disclosure"** means disclosure in a press release reported by the Associated Press, Reuters, Bloomberg or comparable national or international news service or in a document filed by the corporation with AIM (if the Shares are listed on AIM at such time) or furnished to all Shareholders;

**"Regulation S"** means Regulation S, promulgated under the Securities Act, as amended from time to time;

**"Restriction"** means the restrictions referred to in Article XIV, Section 4(j) (as determined by the Board).

**"Rights Issue"** means an offer or allotment to or in favor of Shareholders identified from the register of Shareholders (or in the corporation's depository agent's records) on a date fixed by the Board (being an offer capable of acceptance for a period fixed by the Board) where the New Securities respectively attributable to the interests of all such Shareholders are proportionate (as nearly as is practicable) to the respective number of Shares held by them on that date, subject to such exclusions or other arrangements (if any) as the Board considers necessary or expedient in its exclusive discretion to deal with fractional entitlements or legal or practical problems under the laws of any country,

territory or political subdivision thereof, or the requirements of any relevant regulatory body or share exchange in any jurisdiction;

**"Rights Notice"** has the meaning given to it in Article XIV, Section 3(c);

**"Securities Act"** means the Securities Act of 1933, as amended from time to time;

**"Share"** means any share in the capital of the corporation;

**"Shareholder"** means any holder of Shares;

**"Specified Shares"** means the Shares specified in a Disclosure Notice; and

**"Voting Rights"** means all of the voting rights attributable to Shares which are exercisable at a meeting of Shareholders at the material time.

## **Section 2. Takeover Provisions.**

(a) For the purposes of this Section 2, "interests in Shares" shall have the same meaning as the term "interests in securities" as is set out in The City Code on Takeovers and Mergers administered by the UK Panel on Takeovers and Mergers, as amended from time to time, and "interested in Shares" and "interested" shall also be interpreted accordingly.

(b) From the date of Admission, for so long as the corporation has Shares listed on the Official List of the UK Listing Authority and admitted to trading on the main market for listed securities of the LSE or admitted to trading on AIM, or any successor to either of them, the provisions of Article XIV, Section 2 shall be in effect.

(c) Subject to the Applicable Corporation Statute, when:

(i) any Person acquires, whether by a series of transactions over a period of time or not, an interest in Shares which (taken together with Shares in which Persons acting in concert with such Person are interested) carry thirty percent (30%) or more of the Voting Rights; or

(ii) any Person who, together with Persons acting in concert with such Person, is interested in Shares which in the aggregate carry not less than thirty percent (30%) but not more than fifty percent (50%) of the Voting Rights and such Person, or any Person acting in concert with such Person, acquires an interest in any other Shares which will increase the percentage of Shares carrying Voting Rights in which he is interested,

then such Person and any Person acting in concert with such Person (each such Person referred to below as the **"Offeror"**) shall extend an Offer, on the basis set out in Article XIV, Section 2(e) through 2(i), to all the holders of Shares. Offers for different classes of Shares must be comparable.

(d) The taking of an option to acquire Shares or an interest in Shares will be deemed to constitute the acquisition of Shares giving rise to the obligation to make an Offer under Article XIV, Section 2(c) herein where the relationship and arrangements between the parties concerned is such that effective Control has passed to the taker of the option. The acquisition of

Voting Rights, or general control of them, as distinct from the associated Shares, itself will be deemed to be an acquisition of the associated Shares.

**(e)** Each member of a group of Persons acting in concert that constitutes an Offeror will have a joint and several obligation to extend an Offer.

**(f)** In respect of any Offer(s) made under Article XIV, Section 2(c) :

**(i)** such Offer(s) must be conditional only upon the Offeror having received acceptances in respect of Shares which, together with Shares acquired or agreed to be acquired before or during the Offer, will result in the Offeror and any Person acting in concert with it having an interest in Shares carrying more than fifty percent (50%) of the Voting Rights; and

**(ii)** no acquisition of any interest in Shares which would give rise to the obligation to make an Offer under Article XIV, Section 2(c) may be made if the making or implementation of such Offer would or might be dependent on the passing of a resolution at any meeting of shareholders of the Offeror or upon any other conditions, consents or arrangements.

**(g)** An Offer must be unconditional if the Offeror (and Persons acting in concert with it) holds Shares carrying more than fifty percent (50%) of the Voting Rights before the Offer is made.

**(h)** An Offer must, in respect of each class or series of Shares, be in cash (or be accompanied by a cash alternative) at not less than the highest price paid by the Offeror (or any Persons acting in concert with it) for any interest in Shares of that class or series during the twelve (12) months prior to the announcement of the Offer (and the price must be revised upwards to not less than the highest price paid by the Offeror (or any Persons acting in concert with it) in the event that interests in Shares are so acquired by such Persons during the Offer Period at a price higher than the initial offer price).

An Offer must be made in writing and publicly disclosed, and must be open for acceptance for a period of not less than thirty (30) days and, if the Offer is made conditional as to acceptances and becomes or is declared unconditional as to acceptances, the Offer must remain open for not less than fourteen (14) days after the date on which it would otherwise have expired.

**(i)** When an interest in Shares has been acquired for consideration other than cash in a transaction giving rise to an obligation to make an Offer under Article XIV, Section 2(c), the Offer must nevertheless be in cash or be accompanied by a cash alternative of at least equal value, which value must be determined by an independent valuation.

**(j)** In calculating the price paid for Shares, stamp duty and broker's commission, if any, shall be excluded.

**(k)** If any interest in Shares has been acquired in exchange for listed securities in a transaction giving rise to an obligation to make an Offer under Article XIV, Section 2(c), the price paid will be established by reference to the middle market price of such listed securities on the applicable market on the date of such acquisition.

**(l)** If any interest in Shares has been acquired by the conversion or exercise (as applicable) of convertible securities, warrants, options or other subscription rights giving rise to an obligation to make an Offer under Article XIV, Section 2(c), the price paid will normally be established by reference to the middle market price of such Shares on the LSE at the close of business on the day on which the relevant exercise or conversion notice was submitted. If, however, the convertible securities, warrants, options or subscription rights were acquired during the Offer Period or within twelve (12) months prior to its commencement, they will be treated as if they were purchases of the underlying Shares at a price equal to the sum of the purchase price of such convertible securities, warrants, options or other subscription rights plus the relevant conversion or exercise price paid (or if such convertible securities, warrants, options or other subscription rights have not yet been converted or exercised, the maximum conversion or exercise price payable under the relevant conversion or exercise terms).

**(m)** In the event that any Director (or any of his or her affiliates) sells Shares to a purchaser as a result of which the purchaser is required to make an Offer under Article XIV, Section 2(c), such Director must ensure that as a condition of the sale the purchaser undertakes to fulfil its obligations under Article XIV, Section 2(c). In addition, subject to Article XIV, Section 2(p), such Director shall not resign from the Board until the first closing date of the Offer or the date when the Offer becomes or is declared wholly unconditional, whichever is the later.

**(n)** No Offeror or nominee of an Offeror may be appointed to the Board, nor may an Offeror exercise the Voting Rights represented by the Shares held by such Offeror, until public disclosure of the Offer has been made.

**(o)** The obligation to make an Offer under Article XIV, Section 2(c) can be waived in the following circumstances and with the relevant consent:

- (i)** such an obligation may be waived in any circumstances by the consent of the holders of at least seventy five percent (75%) of the Voting Rights (excluding for this purpose the Voting Rights of the Offeror and any persons who are affiliated or acting in concert with the Offeror);
- (ii)** if an allotment of New Securities by the corporation as consideration for an acquisition or a cash subscription would otherwise result in such an obligation, the obligation may be waived by the consent of the holders of the majority of the Voting Rights of those Shareholders who are not the proposed allottee(s) of the New Securities (nor affiliated or acting in concert with the proposed allottee(s) of the New Securities); or
- (iii)** if an underwriter incurs such an obligation unexpectedly (for example as a result of an inability to complete a distribution of securities of the corporation), the obligation may be waived by the consent of the holders of a majority of the Voting Rights of those Persons who are neither the underwriter(s) nor Shareholders affiliated or acting in concert with such underwriter(s).

**(p)** If a Director is affiliated with an Offeror, he or she shall forthwith vacate his or her office if his or her resignation is requested by notice tendered at a meeting of the Board by all other Directors who are not so affiliated. For purposes hereof, like notices signed by each such Director shall be effective as a single notice signed by all such Directors.

### **Section 3. Preemptive Rights.**

(a) Subject to the Applicable Corporation Statute, these bylaws and the terms of any Board resolution creating new Shares:

(i) the unissued Shares from time to time shall be under the control of the Board which may allot the same to such Persons, against cash or for such other consideration which is not cash, with such restrictions and conditions, in excess of their nominal value, at their nominal value or at a discount to their nominal value and/or with payment of commission and at such times as the Board shall deem appropriate; and

(ii) the Board shall have the power to cause the corporation to grant to any Person the option to acquire from the corporation any unissued shares, in each case on such terms as the Board shall deem appropriate.

(b) Unless otherwise determined by Shareholders holding seventy five percent (75%) or more of the Voting Rights, each Shareholder shall have a pre-emption right as set out in Article XIV, Section 3(c) herein to purchase a Pro Rata Share of any New Securities that the corporation may, from time to time, propose to allot wholly for cash, subject to such exclusions or other arrangements (if any) as the Board considers necessary or expedient in its exclusive discretion to deal with fractional entitlements to New Securities arising from each Shareholder's Pro Rata Share or legal or practical problems under the laws of any country, territory or political subdivision thereof, or the requirements of any regulatory authority or shares exchange in any jurisdiction.

(c) Subject to Article XIV, Section 3(d) herein, if the corporation proposes to allot New Securities, it shall give each Shareholder written notice (the "**Rights Notice**") of its intention, describing the New Securities, the price, the general terms upon which the corporation proposes to allot them, the number of Shares that the Shareholder has the right to purchase and giving each Shareholder not less than twenty one (21) days from delivery of the Rights Notice to agree to purchase all or any part of its Pro Rata Share of such New Securities for the price and upon the general terms specified in the Rights Notice, by giving written notice to the corporation prior to the expiration of such period contained in the Rights Notice setting forth the quantity of New Securities to be purchased thereby. If a Shareholder fails to exercise its pre-emption right within the period specified in this Article XIV, Section 3(c), the corporation shall have one hundred and twenty (120) days after expiration of the period contained in the Rights Notice to allot the unsold New Securities at a price and upon general terms no more favorable to the purchasers than specified in the Rights Notice. If the corporation has not allotted the New Securities within that period, the corporation shall not thereafter allot any New Securities without first offering such securities to the Shareholders for subscription in the manner provided above.

(d) The corporation may at any time and from time to time upon approval by the Board allot New Securities as if Article XIV, Section 3(c) did not apply to such allotment, provided that such power shall be limited:

(i) to the allotment for cash of New Securities in connection with Admission;

(ii) to the allotment for cash of New Securities after Admission provided that the nominal amount of such Shares or the Shares into which such New Securities may be converted, during any twelve (12) month period, does not exceed in aggregate ten percent (10%) of the Shares in issue at such time; or

(iii) to the allotment of New Securities in connection with a Rights Issue.

#### **Section 4. Disclosure of Interests in Shares.**

- (a) a Person shall be treated as appearing to be interested in Shares if:
- (i) the Person has been named in a Disclosure Notice as being interested;
  - (ii) in response to a Disclosure Notice, the Person holding the Specified Shares or another Person appearing to be interested in them has failed to establish the identities of those who are interested and (taking into account the response and other relevant information) the corporation has reasonable cause to believe that the Person in question is or may be interested in such Shares; or
  - (iii) the Person holding the Specified Shares is an Operator and the Person in question has notified the Operator that he is so interested.
- (b) Without prejudice to, and in addition to any obligation to disclose under the Applicable Corporation Statute, where a Person either:
- (i) to his knowledge acquires a Notifiable Interest, or ceases to have a Notifiable Interest; or
  - (ii) becomes aware that he has acquired a Notifiable Interest, or that he has ceased to have a Notifiable Interest which he previously held,

he shall notify the corporation of his holding without delay, but in any event no later than two trading days after the date on which the relevant Person learns of the acquisition or cessation of a Notifiable Interest, or on which, having regard to the circumstances, should have learned of it, regardless of the date on which the acquisition or cessation of a Notifiable Interest takes effect.

- (c) The obligation to disclose in Article XIV, Section 4(b) also arises where there is a change in the holding of a Person with a Notifiable Interest (or a Person who had a Notifiable Interest before such change) which results in an increase or decrease of such holding through any single percentage (and for these purposes if the percentage level is not a whole number it shall be rounded down to the next whole number).
- (d) Any notification under Article XIV, Section 4(b) shall identify the Person with such holding, the nature and extent of his holding, the date on which he acquired or ceased to hold a Notifiable Interest or on which there was a change in his holding which resulted in an increase or decrease of such holding through any single percentage and any other information set out in form TR1, which is available in electronic format at the website of the Financial Services Authority at [www.fsa.gov.uk](http://www.fsa.gov.uk).
- (e) The Board may serve a Disclosure Notice in writing on any Person whom the Board knows or has reasonable cause to believe to be interested in Shares requiring such Person to indicate whether or not it is the case and, where that

Person holds any interest in any such Shares, to give such further information as may be required by the Board.

- (f) Any such notice may require the Person to whom it is addressed to give particulars of his own present interest in Shares.
- (g) A notice under Article XIV, Section 4(e) shall require any information given in response to the Disclosure Notice to be given in writing within such reasonable time as may be specified in the Disclosure Notice.
- (h) A notice which has taken effect under Article XIV, Section 4(e) shall remain in effect in accordance with its terms following a transfer of the Shares to which it relates unless and until the Board determines otherwise and notifies the Shareholder accordingly.
- (i) Notwithstanding anything in this Section 4 to the contrary, if:
  - (i) a Disclosure Notice has been served on a Person appearing to be interested in Specified Shares; and
  - (ii) the corporation has not received the information required in respect of the Specified Shares within a period of 14 days (subject as provided in Article XIV, Sections 4(n) and 4(o)) after the service of the Disclosure Notice,

then the Board may determine that the Person who is interested in Specified Shares is subject to the Restrictions in respect of such Shares. The corporation shall, as soon as practicable after the determination, give notice to the relevant Person stating that (until such time as the Board determines otherwise under Article XIV, Section 4(o)) the Specified Shares shall be subject to the Restrictions stated in the notice.

- (j) Subject to Article XIV, Sections 4(k), 4(n) and 4(o), the Restrictions which the Board determines applicable to Specified Shares shall be one or more (as determined by the Board) of the following:
  - (i) the Person holding the Specified Shares shall not be entitled, in respect of the Specified Shares, to be present or to vote (either personally, or by proxy or otherwise) at an annual or other meeting of the Shareholders, or to exercise any other right in relation to an annual or other meeting;
  - (ii) no transfer of the Specified Shares shall be effective or shall be recognised by the corporation; and
  - (iii) no dividend or other sums which would otherwise be payable on or in respect of the Specified Shares shall be paid to the person holding the Specified Shares.

- (k)** The Board may determine that one or more Restrictions imposed on Specified Shares shall cease to apply at any time. If the corporation receives the information required in the relevant Disclosure Notice, the Board shall, within 7 days of receipt, determine that all Restrictions imposed on the Specified Shares shall cease to apply. In addition, the Board shall determine that all Restrictions imposed on the Specified Shares shall cease to apply if the corporation receives an executed and if necessary duly stamped instrument of transfer in respect of the Specified Shares, which would otherwise be given effect to:
- (i)** if the transfer is made pursuant to a sale of the Specified Shares on AIM or the London Stock Exchange;
  - (ii)** if the transfer is by way of an acceptance of an offer to acquire all the Shares (other than stock which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the Shares to which the offer relates; or
  - (iii)** if the transfer is made pursuant to a sale which is shown to the satisfaction of the Board to be a bona fide sale of the whole of the beneficial interest in the Specified Shares to a person who is unconnected with the transferor or with any other person appearing to be interested in the Shares.
- (l)** Where dividends or other sums payable on Specified Shares are not paid as a result of Restrictions having been imposed, the dividends or other sums shall accrue and be payable (without interest) on the relevant Restrictions ceasing to apply.
- (m)** If the Board makes a determination under Article XIV, Section 4(k) it shall notify the purported transferee as soon as practicable and any person may make representations in writing to the Board concerning the determination. Neither the corporation nor the Board shall in any event be liable to any person as a result of the Board having imposed Restrictions, or failed to determine that Restrictions shall cease to apply, if the Board has acted in good faith.
- (n)** Where the Specified Shares represent less than 0.25 per cent. of the outstanding Shares in issue at the date of issue of the relevant Disclosure Notice then:
- (i)** the period of 14 days referred to in Article XIV, Section 4(i) is to be treated as a reference to a period of 28 days; and
  - (ii)** any determination made by the Board under Article XIV, Section 4(i) may only impose the Restrictions referred to in Article XIV, Section 4(j)(i).
- (o)** The Board may, at its discretion, suspend, in whole or in part, the imposition of a Restriction, either permanently or for a given period, and may pay a dividend or other sums payable in respect of the Specified Shares to a trustee (subject to the Restriction referred to in Article XIV, Section 4(j)(iii)). Notice of suspension, specifying the Restrictions suspended and the period of suspension, shall be given by the Corporation to the relevant stockholder as soon as practicable.

(p) Where a Disclosure Notice is served on an Operator, the obligations of the Operator shall be limited to disclosing information recorded by it relating to a Person appearing to be interested in the Shares held by it.

#### **Section 5. Restricted Transactions and Interests.**

(a) The corporation shall decline (and shall instruct its officers, transfer agent and registrar to decline) to register the transfer of any Share where (i) it appears to the corporation or such officer, transfer agent or registrar that the transfer is not made in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an available exemption from registration under the Securities Act and any applicable U.S. state securities laws, including the Applicable Corporations Statute, (ii) the transferee is not able to certify, to such officer, transfer agent or registrar's satisfaction, that it is not a Prohibited Person, (iii) as a result of such transfer the Non-US Person holder of Shares would have an interest equal to or more than five percent (5%) of the aggregate outstanding shares of that class of Shares and such Non-US Person does not have in place with the applicable government agency(ies) an agreement prohibiting its access to classified information of the corporation and preventing it from exercising control over or influencing the business and/or management of the corporation, or (iv) such officer, transfer agent or registrar determines, in its sole discretion, that the transfer might require the corporation to register any of its shares under Section 12 of the 1934 Act, or would result in the corporation becoming subject to the periodic reporting requirements of the 1934 Act. The Board of Directors may from time to time determine whether a transfer of Shares is made in accordance with the provisions of Regulation S, pursuant to registration under the Securities Act or pursuant to an available exemption from registration under the Securities Act. In making its determination, the Board of Directors may require such opinions of counsel, affidavits, undertakings or agreements as it may deem necessary or advisable.

(b) If it shall come to the notice of any Director, officer, transfer agent or registrar that any Person with an interest in Shares (i) has an interest in Shares in breach of any law or requirement of any country or jurisdiction or by virtue of which such Person is not qualified to own those shares, (ii) is a Prohibited Person, or (iii) is a Non-US Person with an interest in Shares equal to or more than five percent (5%) of the aggregate outstanding shares of that class of Shares and such Non-US Person does not have in place with the applicable government agency(ies) an agreement prohibiting its access to classified information of the corporation and preventing it from exercising control over or influencing the business and/or management of the corporation, (any such Person's interests, "**Disadvantageous Ownership**" and such Shares, the "**Relevant Shares**") then the corporation may serve written notice (hereinafter called a "**Transfer Notice**") upon such Person (or any one of such Persons where Shares are registered in joint names) within twenty-one days (or such extended time as in all the circumstances the corporation consider reasonable) to transfer (and/or procure the disposal of interests in) its interest in the Relevant Shares such that he or it no longer holds Disadvantageous Ownership and to another Person with respect to which or whom holding interests in the Relevant Shares would not, in the sole and conclusive determination of the corporation, result in Disadvantageous Ownership (such other Person, an "**Eligible Transferee**"). On and after the date of such Transfer Notice, and until registration of a transfer of the Relevant Shares to which it relates pursuant to the provisions referred to in this Article XIV, Section 5, the rights and privileges attaching to such Relevant Shares will be suspended and not capable of exercise.

(c) If within twenty-one days after giving the Transfer Notice, the Transfer Notice has not been complied with to the satisfaction of the Board of Directors, the corporation may sell the Relevant Shares on behalf of the holder thereof to any one or more Eligible Transferees. To give effect to any sale pursuant to this Article XIV, Section 5, the officers, transfer agent or registrar may authorise a Person to execute an instrument of transfer of the Shares sold to, or in accordance with the directions of, the purchaser. The transferee shall be entered in the stock register of the corporation as the Holder of the Shares comprised in any such transfer and shall not be bound to see to the application of the purchase moneys nor shall his title to the Shares be affected by any irregularity in or invalidity of the proceedings connected to the sale. The net proceeds of the sale of the Relevant Shares, after payment of the corporation's costs of the sale, shall be received by the corporation, whose receipt shall be a good discharge for the purchase moneys, and shall belong to the corporation and, upon their receipt, the corporation shall become indebted to the former holder of the Relevant Shares, for an amount equal to the net proceeds of transfer. The corporation is deemed to be a debtor and not a trustee in respect of that amount for such Person. No interest is payable on that amount and the corporation is not required to account for money earned on it. The amount may be employed in the business of the corporation or as it thinks fit. The corporation may register or cause the registration of the transferee as holder of the Relevant Shares and thereupon the transferee shall become absolutely entitled thereto.

(d) Any Person that becomes aware that his or its interests in Shares is a Disadvantageous Ownership shall forthwith, unless he has already received a Transfer Notice pursuant to the provisions referred to above, either transfer the shares to one or more Eligible Transferees or give a request in writing to the Directors for the issue of a Transfer Notice in accordance with the provisions referred to above. Every such request shall, in the case of certificated Shares, be accompanied by the certificate(s) for the shares to which it relates.

(e) Subject to the provisions of these By-laws, the Director, officers, transfer agent and registrar will, unless he or it has reason to believe otherwise, be entitled to assume without inquiry that none of the Shares are held in such a way as to entitle such Director, officers, transfer agent or registrar to serve a Transfer Notice in respect thereof. The officers, transfer agent and registrar may, however, at any time and from time to time call upon any holder (or any one of joint holders or a Person who is automatically entitled to the shares by transmission or by law) of Shares by written notice to provide such information and evidence as they require upon any matter connected with or in relation to such holder of Shares. In the event of such information and evidence not being so provided within such reasonable period (not being less than twenty-one days after service of the notice requiring the same) as may be specified in said notice, the officers, transfer agent and registrar may, in their absolute discretion, treat any Share held by such a holder or joint holders or Person who is automatically entitled to the shares by transmission or by law as if such Person holds Disadvantageous Ownership.

(f) No Director, officer, transfer agent or registrar of the corporation will be required to give any reasons for any decision, determination or declaration taken or made in accordance with these provisions. The exercise of the powers conferred by the provisions referred to in this Section 5 may not be questioned or invalidated in any case on the grounds that there was insufficient evidence of interests in Shares by any Person or that any interests in Shares was otherwise than as appeared to the Director, officer, transfer agent or registrar at the relevant date, provided that the said powers have been exercised in good faith.

**Section 6. No Access to Classified Information.** Notwithstanding Section 220 or any other provision of the Applicable Corporations Statute, no Person shall, as a result of his or its

interests in Shares or status as a Shareholder, be entitled to, require or have, and shall be effectively excluded from, access to any and all classified information in the possession of the corporation.

**Section 7. Depository Interests.** The Board is authorized to make such arrangements as it deems to be in the best interests of the corporation in order to enable Shares to be represented by and exchanged for depository interests which are eligible to be held and transferred in uncertificated form in a computer-based system whether located in the United Kingdom or in any other country. Notice of any such arrangements shall be provided to Shareholders in such manner as the Board may determine.

**Section 8. Amendment of this Article.** Notwithstanding any other provision of these By-laws or any provision of law which might otherwise permit a lesser vote or not vote, following Admission, the affirmative vote of seventy five percent (75%) or more of the Voting Rights, voting together as a single class, shall be required to alter, amend or repeal this Article.

**Section 9. Severability.** If any provision of this Article or any part of any such provision is held under any circumstances to be invalid or unenforceable in any jurisdiction, then:

- (a) such provision or part thereof shall, with respect to such circumstances and in such jurisdiction, be deemed amended to conform to all applicable laws so as to be valid and enforceable to the fullest possible extent;
- (b) the invalidity or unenforceability of such provision or part thereof under such circumstances and in such jurisdiction shall not affect the validity or enforceability of such provision or part thereof under any other circumstances or in any other jurisdiction; and
- (c) the invalidity or unenforceability of such provision or part of this Article shall not affect the validity or enforceability of the remainder of such provision or the validity or enforceability of any other provision of this Article. Each provision and section of this Article is separable from every other provision of this Article, and each part of each provision of this Article is separable from every other part of such provision.