

**Amended and Restated Bylaws  
of  
Internet Safety Labs, Inc.**

a Delaware Charitable Nonstock Corporation

(the “Bylaws”)

Approved by the Board of Directors: April 21, 2023

**ARTICLE 1. NAME**

§ 1.1 The name of this nonprofit corporation is Internet Safety Labs, Inc. (hereinafter the “Corporation”).

§ 1.2 The Corporation may do business as “Internet Safety Labs” and/or such other names as the Board may determine in accordance with the Certificate of Incorporation, these Bylaws, and applicable law.

**ARTICLE 2. NONPROFIT PURPOSES**

§ 2.1 **IRC Section 501(c)(3) Purposes.** The Corporation is organized exclusively for one or more of the purposes as specified in Section 501 (c) (3) of the Internal Revenue Code. Notwithstanding any other provision of these Bylaws, the Corporation shall not carry on any other activities not permitted to be carried on:

- a. by a corporation exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code (or corresponding section of any future United States Internal Revenue Code), or
- b. by a corporation, contributions to which are deductible under section 170(c)(2) of the Internal Revenue Code (or corresponding section of any future United States Internal Revenue Code).

§ 2.2 **General Objectives and Purposes.** The Corporation is organized to conduct any lawful business and engage in any lawful act or activity consistent with Federal and State law, including the Delaware General Corporation Law (“DGCL”), and such other laws governing not-for-profit Delaware corporations exempt from Federal income tax under Section 501(c)(3) of the Internal Revenue Code (the “Code”).

§ 2.3 **Specific Objectives and Purposes.** The purpose of the Corporation is to promote safety in the context of the design, development, and use of software products and services through the institution of independent testing, research, and a consumer-facing certification mark.

The key objectives of the Corporation are to empower the public such that:

- People are reliably able to tell safe software products from harmful products, and

### ARTICLE 3. OFFICES AND REGISTERED AGENT

- § 3.1 The principal office of the Corporation shall be located at 3146B Sports Arena Blvd #1004, San Diego, California 92110 USA. The board of directors of the Corporation (the “**Board of Directors**” or “**Board**”, and each director on the Board a “**Director**”) may change the principal office location, and establish, change, or eliminate branch or subordinate office in its sole discretion.
- § 3.2 The name and street address of the Corporation’s registered agent shall be Unisearch, 28 Old Rudnick Lane, Dover, Delaware 19901. The Board may terminate this registered agent, and may appoint a new registered agent in its sole discretion, consistent with applicable law.

### ARTICLE 4. DIRECTORS

- § 4.1 **Board of Directors.** Subject to limitations of the Certificate of Incorporation of the Corporation and these Bylaws, the activities and affairs of the Corporation shall be conducted, and all corporate powers shall be exercised, by or under the direction of the Board of Directors. The Board may delegate the management of the activities of the Corporation to any person or persons, a management company, or committees however composed, provided that the activities and affairs of the Corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the Board. Without prejudice to these general powers, but subject to the provisions just stated, it is hereby expressly declared that the Board shall have the following powers in addition to the other powers enumerated in these Bylaws:
- a. To select, appoint, and remove all the other officers, agents, and employees of the Corporation, prescribe qualifications, powers, and duties for them that are not inconsistent with law, the Certificate of Incorporation, or these Bylaws, fix their compensation, and require from them security for faithful service.
  - b. To conduct, manage, and control the affairs and activities of the Corporation and to make such rules and regulations therefor not inconsistent with law, the Certificate of Incorporation, or these Bylaws, as they may deem best.
  - c. To adopt, make, and use a corporate seal and to alter its form from time to time as the Board may deem best.
  - d. To borrow money and incur indebtedness for the purposes of the Corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidence of debt and securities for debt.
  - e. To carry on a business at a profit and apply any profit that results from the business activity to any activity in which it may lawfully engage and consistent with its non-profit purposes provided in Article 2 of these Bylaws.

- § 4.2 Number of Directors.** The number of Directors constituting the entire Board shall be seven (7). The initial Board of Directors under these Bylaws shall comprise the Directors appointed under the most recently operative version of these Bylaws, with any remaining seats available to be filled pursuant to §4.3 below.
- § 4.3 Term of Office.** Each Director shall hold office until the earliest of such Director's death, resignation, or removal.
- § 4.4 Vacancies.** Vacancies on the Board, whether caused by resignation, death, disqualification, removal, an increase in the authorized number of Directors, or otherwise, may be filled by the affirmative vote of a majority of the remaining Directors, although less than a quorum or by the sole remaining Director.
- § 4.5 Places of Meetings.** Meetings of the Board may be held at any place as may from time to time be fixed by the Chair or by resolution of the Board, or as may be specified in the notice of meeting. Meetings may be held in person or by any combination of telephonic or audio conference, videoconferencing, or any other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting ("**Distanced Meetings**"). The primary means for the provision of notice of meetings will be via electronic mail (email) to the Directors at the email address that appears in the records of the Corporation. Directors shall provide the Corporation with any change in their email address.
- § 4.6 Regular Meetings.** Regular meetings of the Board shall be held at such times and places (including as Distanced Meetings) as the Board shall from time to time by resolution determine, though no less frequently than once per calendar year.
- § 4.7 Special Meetings.** Special meetings of the Board shall be held whenever called by the Chair, President, or by a majority of the Directors then in office, and shall be held at such times and places (including as Distanced Meetings) as those calling such meeting shall determine.
- § 4.8 Notice of Meetings or Waiver of Notice.** A notice of the place, date, time, and purpose or purposes of each meeting of the Board shall be given to each Director by mail or email at least two days before the special meeting, or by telephoning or emailing the same, or by delivering the same personally not later than the day before the day of the meeting. Notice need not be given of regular meetings of the Board held at times and places fixed by resolution of the Board. Directors may waive notice of any meeting in writing, and the attendance of any Director at a meeting shall constitute a waiver of notice of such meeting except when a Director attends a meeting for the express purpose of objecting, at the beginning of such meeting, to the transaction of any business because the meeting is not lawfully called or convened.
- § 4.9 Quorum and Manner of Acting.** A majority of the Directors then in office shall constitute a quorum. A majority of the Directors present, whether or not a quorum is present, may adjourn a meeting from time to time to another time and

place without notice. The affirmative vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, except as otherwise provided by law or in these Bylaws (*e.g.*, §4.12 (acting by written consent), §4.3 (filling vacancies), §4.15 (appointing Board Committees), §7.3 (approving conflict of interest transactions), §8.2 (amending these Bylaws)).

A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

Notwithstanding the foregoing, the following decisions shall require the affirmative vote of a supermajority (*i.e.*, two-thirds (2/3) or more) of the Directors then in office:

- a. Removal of a Director or Officer;
- b. Approving major structural changes to the Corporation including, but not limited to (i) amending the Certificate of Incorporation of the Corporation, (ii) any agreement of merger or consolidation, and (iii) the sale, lease, or exchange of all or substantially all of the Corporation's property and assets.
- c. Dissolution, liquidation, or winding up of the affairs of the Corporation or a revocation of any such dissolution, liquidation, or winding up.

**§ 4.10 Meeting By Telephone or Similar Communications Equipment.** The members of the Board, or any committee thereof, may participate in any meeting through conference calls or other forms of communication that permit participants to hear and be heard by all other participants, and participation in such meeting shall constitute the presence in person by such member at such meeting.

**§ 4.11 Adjournment.** A majority of the Directors present, whether or not a quorum is present, may adjourn any Board meeting to another time and place. Notice of the time and place of holding an adjourned meeting need not be given to absent Directors if the time and place is fixed at the meeting adjourned, except as provided in the next sentence. If the meeting is adjourned for more than 72 hours, notice of any adjournment to another time or place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

**§ 4.12 Resignation and Removal.** Any Director may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chair, President, or Secretary, unless otherwise specified in the resignation. Any or all of the Directors may be removed for engaging in any conduct, either within or outside of the Corporation that is contrary to the interest of the Corporation by the action of a supermajority of the Board (as defined in §4.8). Notwithstanding the specification of a later date of the effectiveness of a tendered resignation, the Board may nonetheless remove a Director at an effective date of its determination pursuant to this §4.11 and §4.8.

- § 4.13 Action by Written Consent.** Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if all the Directors consent thereto in writing or by email, and the writing or writings or emails are filed with the minutes of proceedings of the Board.
- § 4.14 No Compensation of Directors.** Directors shall not be compensated for their services as Directors, except for payment or reimbursement of reasonable expenses incurred in connection with such services such as costs to attend Board or committee meetings. Directors may serve the Corporation in any other capacity and receive reasonable compensation therefor.
- § 4.15 Rights of Inspection.** Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of the Corporation of which such person is a Director.
- § 4.16 Board Committees.** The Board may designate one or more committees, each committee to consist of one or more Directors (each a “**Board Committee**”). The Board may designate one or more Directors as alternate members of any Board Committee, who may replace any absent or disqualified member at any meeting of the Board Committee. In the absence or disqualification of a member of a Board Committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any Board Committee, to the extent provided in the resolution of the Board, or in the Bylaws of the Corporation, shall have and may exercise all the powers and authority of the Board 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 Board Committee shall have the power or authority to (i) appoint or remove a Director or (ii) adopt, amend, or repeal any Bylaw of the Corporation. The Board, in its sole discretion, may modify or disband any Board Committee at any time.
- § 4.17 Advisory Committees.** The Board may establish one or more advisory committees to the Board (each an “**Advisory Committee**”). Advisory Committees may consist of Directors or non-Directors and members of any Advisory Committee may be appointed or removed at the Board’s sole discretion. Advisory Committees may not exercise the authority of the Board to make decisions on behalf of the Corporation, but shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee. The Board, in its sole discretion, may modify or disband any Advisory Committee at any time.
- § 4.18 Procedures, Quorum, and Manner of Acting.** Each committee shall fix its own rules of procedure, and shall meet where and as provided by such rules or by resolution of the Board. Except as otherwise provided by law, the presence of a

majority of the then appointed members of a committee shall constitute a quorum for the transaction of business by that committee, and in every case where a quorum is present the affirmative vote of a majority of the members of the committee present shall be the act of the committee.

**§ 4.19 Action by Written Consent.** Any action required or permitted to be taken at any meeting of any Board Committee may be taken without a meeting if all the members of such Board Committee consent thereto in writing or electronic transmission, and the writing or writings or electronic transmissions are filed with the minutes of proceedings of such Board Committee.

**§ 4.20 Term and Termination.** In the event any person shall cease to be a Director of the Corporation, such person shall simultaneously therewith cease to be a member of any Board Committee.

## **ARTICLE 5. OFFICERS**

**§ 5.1 Appoint and Qualifications.** The Board shall appoint the officers of the Corporation, which shall include a President, a Treasurer, and a Secretary. The officers may also include a Chair, an Executive Director, a Vice Chair, and such other officers as the Board may from time to time determine. Each officer shall have such powers and duties as may be prescribed by these Bylaws and as may be assigned by the Board or the President. Any two or more offices may be held by the same person. An officer need not be a Director, except that the Chair and Vice Chair, if appointed by the Board, shall be Directors.

**§ 5.2 Election and Term.** All officers shall be appointed by the Board and shall serve two (2) years and thereafter until such time as their respective successors are appointed and qualified or until their earlier resignation or removal. Any vacancy in any office arising from any cause may be filled for the unexpired portion of the term by the Board.

**§ 5.3 Subordinate Officers.** The Board may appoint, and may empower the President to appoint, such other officers as the business of the Corporation may require. Each such officer shall hold office for the period, have authority, and perform duties as provided in these Bylaws or as the Board or appointing officer may from time to time determine.

**§ 5.4 Resignation and Removal.** Any officer may resign at any time upon written notice to the Corporation and such resignation shall take effect upon receipt thereof by the Chair, Executive Director, President, or Secretary, unless otherwise specified in the resignation. Any officer may be removed from office, with or without cause, at any time by the Board. Any removal of an officer shall be without prejudice to his or her rights, if any, under any contract of employment. Any officer may resign at any time by giving written notice to the Corporation addressed and sent to the Chair, Executive Director, President, or Secretary, but without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party. An officer's resignation shall take effect at the date notice of resignation is received by the addressee or at any later time specified in

the resignation and, unless otherwise specified in the resignation, the acceptance of the resignation shall not be necessary to make it effective. Notwithstanding the specification of a later date of the effectiveness of a tendered resignation, the Board may nonetheless remove an officer at an effective date of its determination pursuant to this §5.4 and §4.8.

- § 5.5 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in these Bylaws for regular appointment to the office, provided that vacancies may be filled as they occur and not on an annual basis.
- § 5.6 President.** The President shall be the chief executive officer of the Corporation, and shall have such duties as customarily pertain to that office. The President shall have general management and supervision of the property, business, and affairs of the Corporation and over its other officers; may appoint and remove assistant officers and other agents and employees (such agents and employees also being subject to an agreement to comply with all the Corporation policies), other than officers referred to in this ARTICLE 5; and may execute and deliver in the name of the Corporation powers of attorney, contracts, and other obligations and instruments.
- § 5.7 Vice Presidents.** A Vice President may execute and deliver in the name of the Corporation contracts and other obligations and instruments pertaining to the regular course of the duties of said office, and shall have such other authority as from time to time may be assigned by the Board or the President.
- § 5.8 Secretary.** The Secretary shall in general have all duties incident to the position of Secretary including custody of the books, records, and documents (other than those maintained by the Treasurer) of the Corporation, shall attest deeds, contracts, leases, and other legal instruments and formal documents and shall perform such other duties as may be assigned by the Board or the President.
- § 5.9 Treasurer.** The Treasurer shall in general have all duties incident to the position of Treasurer including custody of all funds and securities of the Corporation, shall be responsible for the receipt and disbursement of all monies of the Corporation, and shall perform such other duties as may be assigned by the Board. The Treasurer shall keep proper books of accounts of such receipts and disbursements and shall prepare financial statements consistent with generally accepted accounting principles in such forms and at such times as may be required by the Board.
- § 5.10 Assistant Officers.** Any assistant officer shall have such powers and duties of the officer such assistant officer assists as such officer or the Board shall from time to time prescribe.
- § 5.11 Executive Director.** The Executive Director (if any) shall preside over the day-to-day affairs of the Corporation under the direction of the Board of Directors or the President and perform such other duties and have such other powers as the Board of Directors or the President may from time to time prescribe. The Executive Director

shall sit on the Board of Directors in a non-voting capacity. The Board may appoint the Executive Director to also serve as President.

**§ 5.12 Chairperson (“Chair”).** The Chair shall preside at all meetings of the Board and shall have such other powers and duties as may from time to time be assigned by the Board. In the absence or disability of the Chair, the Vice Chair, if any, shall exercise the powers and perform the duties of the Chair until a replacement Chair is appointed or the disability of the Chair is removed. In the event no official Chair is appointed, the President shall preside.

**§ 5.13 Other Officers.** Other officers may be appointed by resolution of the Board or by the President (subject to §5.3 above), with such powers and duties as they may prescribe.

**§ 5.14 Compensation.** The compensation, if any, of Directors, officers, and key employees of the Corporation shall be determined in accordance with the following rules:

- a. **Review and approval.** Compensation of the person shall be reviewed and approved by the Board or Compensation Committee of the Corporation, provided that persons with conflicts of interest with respect to the compensation arrangement abstain from participating in meetings and voting therein.
- b. **Use of data as to comparable compensation.** From time to time the compensation of the person shall be reviewed and approved using data as to comparable compensation for similarly qualified persons in functionally comparable positions in similarly situated corporations.
- c. **Contemporaneous documentation and recordkeeping.** There shall be contemporaneous documentation and recordkeeping with respect to the deliberations and decisions regarding the compensation arrangement.

## **ARTICLE 6. BOOKS, RECORDS, REPORTS, AND AUDITS**

**§ 6.1 Books and Records.** The Corporation shall keep correct and complete books and records of account and shall keep minutes of the proceedings of its members, its Board, and the Board Committees.

**§ 6.2 Reports.** The Corporation shall comply with all state and federal reporting requirements, including filing a Form 990 with the IRS. All members of the Board shall receive a copy of Form 990 prior to its filing and shall have an opportunity to provide questions or comments.

## **ARTICLE 7. CONFLICTS OF INTEREST**

**§ 7.1 Purpose.** The purpose of this Conflict of Interest Policy (this “**Conflict Policy**”) is to protect the interests of the Corporation when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an Officer, Director, or member of a committee with Board-delegated powers or might result in a possible excess benefit transaction. This Conflict Policy is



intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to nonprofit organizations.

## § 7.2 Definitions.

- a. **Interested Person.** Any Director, Officer or member of a committee with Board-delegated powers, who has a direct or indirect Financial Interest or other Conflict, as defined below, is an Interested Person.
- b. **Financial Interest.** A person has Financial Interest if the person has, directly or indirectly, through business, investment, or family:
  - (i) An ownership or investment interest in any entity with which the Corporation has a transaction or arrangement.
  - (ii) A compensation arrangement with the Corporation or with any entity or individual with which the Corporation has a transaction or arrangement; or
  - (iii) A potential ownership or investment interest in, or compensation arrangement with, any entity or individual with which the Corporation is negotiating a transaction or arrangement.

Compensation includes direct and indirect remuneration as well as gifts or favors that are not insubstantial.

A Financial Interest is not necessarily a conflict of interest. Under §7.3b, below, a person who has a Financial Interest may have a conflict of interest only if the Board or committee, as the case may be, decides that a conflict of interest exists.

## § 7.3 Procedures.

- a. **Duty to Disclose.** In connection with any actual or possible conflict of interest (including, but not limited to (i) Financial Interests, (ii) non-financial personal gain or benefit which is contrary to the interests of the Corporation, or (iii) circumstances likely to result in the unauthorized or inappropriate disclosure of the Corporation confidential information, trade secrets, know-how, or other collective expertise or knowledge; collectively, “**Potential Conflicts**”), an Interested Person must disclose the existence of the Potential Conflict and be given the opportunity to disclose all material facts to the Board considering the proposed transaction or arrangement.
- b. **Determining Whether a Conflict of Interest Exists.** After the Interested Person discloses the Potential Conflict and all material facts to the Board, and after any discussion, the Interested Person shall leave the Board meeting while the determination of the Potential Conflict is discussed and voted upon. The remaining Board members shall decide if an actual conflict of interest (an “**Actual Conflict**”) exists.
- c. **Procedures for Addressing the Conflict of Interest.**

- (i) An Interested Person may make a presentation at the Board meeting, but after the presentation, he/she shall leave the meeting during the discussion of, and the vote on, the transaction or arrangement involving the Potential Conflict.
- (ii) The Chair shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (iii) After exercising due diligence, the Board or committee shall determine whether the Corporation can obtain, with reasonable efforts, a more advantageous transaction or arrangement from a person or entity that would not give rise to a Potential Conflict.
- (iv) If a more advantageous transaction or arrangement is not reasonably possible under circumstances not producing a Potential Conflict, the Board shall determine by a majority vote of the disinterested Directors, whether, despite the Actual Conflict, the transaction or arrangement is in the Corporation's best interests, for its own benefit, and whether it is fair and reasonable. In conformity with the above determination, the Board shall make its decision as to whether to enter into the transaction or arrangement.
- (v) The decision of the Board as to whether to enter into the transaction or arrangement with the Interested Person may be effected by unanimous written consent in lieu of a Board meeting, as allowed by law, provided that the Interested Person abstains from the vote in writing.

**§ 7.4 Records of Proceedings.** The minutes of the Board and all committees with Board-delegated powers shall contain:

- a. The names of the persons who disclosed or otherwise were found to have a Financial Interest in connection with an actual or possible conflict of interest, the nature of the Financial Interest, any action taken to determine whether a conflict of interest was present, and the Board's decision as to whether a conflict in fact existed.
- b. The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection with the proceedings.

**§ 7.5 Compensation.**

- a. A voting member of the Board who receives compensation, directly or indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.
- b. A voting member of any committee whose jurisdiction includes compensation matters and who receives compensation, directly or

indirectly, from the Corporation for services is precluded from voting on matters pertaining to that member's compensation.

- c. No voting member of the Board or any committee whose jurisdiction includes compensation matters and who receives compensation, directly or indirectly, from the Corporation, either individually or collectively, is prohibited from providing information to any committee regarding compensation.

**§ 7.6 Annual Statements.** Each Director, Officer, and member of a committee with Board-delegated powers shall annually sign a statement which (i) affirms such person has read and understands this Conflicts Policy as part of these Bylaws of the Corporation, has agreed to comply with this Conflicts Policy and understands that the Corporation is nonprofit and in order to maintain its federal exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes, and (ii) identifies relationships or interests of the signing party that he or she believes might possibly give rise to a conflict of interest.

**§ 7.7 Periodic Reviews.** To ensure the Corporation operates in a manner consistent with nonprofit purposes and does not engage in activities that could jeopardize its tax-exempt status, periodic reviews shall be conducted. The periodic reviews shall, at a minimum, include the following subjects:

- a. Whether compensation arrangements and benefits are reasonable, based on competent survey information and the result of arm's length bargaining.
- b. Whether partnerships, joint ventures, and arrangements with management organizations conform to the Corporation's written policies, are properly recorded, reflect reasonable investment or payments for goods and services, further nonprofit purposes, and do not result in inurement, impermissible private benefit, or in an excess benefit transaction.

**§ 7.8 Use of Outside Experts.** When conducting the periodic reviews as provided for in §7.7 above, the Corporation may, but need not, use outside advisors unless otherwise required by law. If outside experts are used, their use shall not relieve the Board of its responsibility for ensuring periodic reviews are conducted.

## **ARTICLE 8. MISCELLANEOUS PROVISIONS**

**§ 8.1 Fiscal Year.** The fiscal year of the Corporation shall be fixed, and shall be subject to change, by the Board.

**§ 8.2 Amendments to Bylaws.** These Bylaws may be amended or repealed, and new bylaws may be adopted, by action of the Board.

## **ARTICLE 9. INDEMNIFICATION**

**§ 9.1 Definitions.** The following definitions apply for the purposes of this ARTICLE 9:

- a. "agent" means any person who is or was a Director, officer, employee, or other agent of the Corporation, or is or was serving at the request of the

Corporation as a Director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, officer, employee, or agent of a foreign or domestic corporation which was a predecessor corporation of the Corporation or of another enterprise at the request of that predecessor corporation;

- b. “expenses” includes without limitation attorneys’ fees and any expenses of establishing a right to indemnification under §9.3, §9.5, or §9.5.
- c. “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 this ARTICLE 9 with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.
- d. “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a Director, officer, employee, or agent of the Corporation which imposes duties on, or involves services by, such Director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the corporation” as referred to in this ARTICLE 9; and
- e. “proceeding” means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative, or investigative.

**§ 9.2 Indemnification in Actions by Third Parties.** The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the Corporation), or brought under DGCL §145, by reason of the fact that that person is or was an agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise (collectively, “**Indemnitees**”), against expenses, judgments, fines, and amounts paid in settlement actually and reasonably incurred by the person in connection with such action, suit, or proceeding if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any

criminal action or proceeding by judgment, order, settlement, conviction, or upon plea of *nolo contendere* or its equivalent, shall not, of itself create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had reasonable cause to believe that the person's conduct was unlawful.

**§ 9.3 Indemnification in Actions by or in the Right of the Corporation.** The Corporation shall have power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action or suit by or in the right of the Corporation, or brought under DGCL §145 to procure a judgment in its favor by reason of the fact that the person is or was an agent or other Indemnitee of the Corporation, against expenses actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit if the person acted in good faith, in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, and except that no indemnification shall be made in respect to any claim, issue, or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

**§ 9.4 Indemnification Against Expenses.** To the extent that a present or former agent or other Indemnitee of the Corporation has been successful on the merits in defense of any action, suit, or proceeding referred to in §9.2 or §9.3 of this ARTICLE 9 or in defense of any claim, issue, or matter therein, such person shall be indemnified against expenses actually and reasonably incurred by such person in connection therewith.

**§ 9.5 Required Determinations.** Any indemnification under §9.2 and §9.3 (unless ordered by court) shall be made by the Corporation only as authorized in the specific case, upon a determination that indemnification of the present or former agent or other Indemnitee is proper in the circumstances because the person has met the applicable standard of conduct set forth in §9.2 or §9.3 of this ARTICLE 9, by:

- a. A majority vote of the Directors who are not parties to such action, suit, or proceeding, even those less than a quorum; or
- b. A committee of such Directors designated by majority vote of such Directors, even though less than a quorum; or
- c. Independent legal counsel in a written opinion, if there are no such Directors, or if such Directors so direct.

**§ 9.6 Advance of Expenses.** Expenses incurred by an agent or other Indemnitee in defending any proceeding may be paid by the Corporation in advance of the final disposition of such action, suit, or proceeding upon receipt of an undertaking by or on behalf of such Director or officer to repay that amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this ARTICLE 9. Such expenses incurred by former agents or other Indemnitees of the Corporation or by persons serving at the request of the Corporation as directors, officers, employees, or agents of another corporation, partnership, joint venture, trust, or other enterprise may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

- a. The indemnification and advancement of expenses provided by, or granted pursuant to the other subsections of this ARTICLE 9 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of disinterested Directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office. A right to indemnification or to advancement of expenses arising under a provision of the Certificate of Incorporation or a bylaw shall not be eliminated or impaired by an amendment to the Certificate of Incorporation or the Bylaws after the occurrence of the act or omission that is the subject of the action, suit, or proceeding for which indemnification or advancement of expenses is sought, unless the provision in effect at the time of such act or omission explicitly authorizes such elimination or impairment after such action or omission has occurred.
- b. The indemnification and advancement of expenses provided by, or granted pursuant to, this ARTICLE 9 shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be an agent or Indemnitee and shall inure to the benefit of the heirs, executors, and administrators of such a person.

**§ 9.7 Insurance.** The Corporation shall have power to purchase and maintain insurance on behalf of any agent of the Corporation who is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against such person and incurred by such person in any capacity or arising out of such person's status as such whether or not the Corporation would have the power to indemnify such person against liability under the provisions of this ARTICLE 9.

**§ 9.8 Jurisdiction.** The Court of Chancery is hereby vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification brought under this ARTICLE 9 or under any bylaw, agreement, vote of members or disinterested Directors, or otherwise. The Court of Chancery may summarily determine the Corporation's obligation to advance expenses.

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