

## AMENDING AGREEMENT

Reference is made to (1) the Letter Agreement, dated as of October 24, 2024, between Wembley Group Partners, LP, a Delaware limited partnership (the “Investor”), and The Westaim Corporation, a corporation existing under the laws of the Province of Alberta (the “Company”), and (2) the Investment Agreement, dated as of October 9, 2024, by and among (i) the Investor, (ii) the Company, (iii) solely for purposes of Sections 2.04(c), 4.03, 4.05, 6.01, 6.11 and 6.17 thereof, Arena Investors Group Holdings, LLC, a Delaware limited liability company (“Arena”), and (iv) solely for purposes of Sections 2.04(d) and 4.03 thereof, Daniel Zwirn and Lawrence Cutler (the “Investment Agreement”, as amended by the Letter Agreement, the “Agreement”). Capitalized terms used and not defined herein shall have the respective meanings assigned to them in the Agreement. Pursuant to Section 10.09 of the Agreement, the Agreement may be amended at any time by mutual written agreement of the parties thereto.

- I. **Amendment to Investment Agreement.** The Investor, the Company, Arena, Daniel Zwirn and Lawrence Cutler hereby agree to amend the Agreement in the manner set forth herein on this 15<sup>th</sup> day of November, 2024.
  - a. The first, third, fifth, seventh and eighth recitals are hereby amended as follows:

*WHEREAS, pursuant to the terms and conditions of this Agreement ~~and the Plan of Arrangement (as defined herein)~~, (i) the Investor wishes to purchase from the Company, and the Company wishes to sell to the Investor, 71,878,947 Company Common Shares (the “Common Shares”) (the “Common Stock Investment”), and (ii) in connection therewith, the Company shall issue to the Investor par warrants to purchase 7,822,057 Company Common Shares having an exercise price of CAD \$4.02 per Company Common Share (the “Par Warrants,” the form of which is attached hereto as Exhibit A), and incentive warrants to purchase 23,466,171 Company Common Shares having an exercise price of CAD \$4.75 per Company Common Share (the “Incentive Warrants,” the form of which is attached hereto as Exhibit B, and together with the Par Warrants, the “Warrants” and together with the Common Shares, the “Securities”), in each case upon the terms and conditions set forth in this Agreement (such sale and issuance of the Securities, the “Private Placement”), with the number of such Securities and the exercise prices of the Warrants subject to adjustment for, among other things, the Reverse Stock Split (as defined herein), any stock dividend, distribution or return, stock split, combination, reclassification, recapitalization, exchange, readjustment of shares or other similar event involving a change in the capital structure of the Company with respect to such Securities prior to the Closing (as defined herein);*

...

*WHEREAS, prior to the consummation of the ~~Common Stock Investment~~Private Placement, the parties hereto desire that the Company implement a Redomiciliation (as defined herein) in accordance with the Plan of Arrangement, pursuant to which the Company will change its jurisdiction of incorporation from Alberta to the State of Delaware in the United States of America and, in connection therewith, adopt (a) a certificate of incorporation in accordance with the DGCL and in the form set forth on Exhibit C to this Agreement (the “Delaware Certificate of Incorporation”), and (b) bylaws in accordance with the DGCL and in the form set forth on Exhibit D to this Agreement (the “Initial Delaware Bylaws”);*

...

*WHEREAS, concurrently with the Closing, the Company and the Investor will execute and deliver the investor rights agreement (the “Investor Rights Agreement”) in the form set forth in Exhibit E to this Agreement, pursuant to which the Company will agree to provide certain*

rights to the Investor, and the bylaws of the Company will be amended and restated in the form attached hereto as Exhibit P to this Agreement (the “A&R Delaware Bylaws”, together with the Initial Delaware Bylaws, the “Delaware Bylaws”);

...

WHEREAS, the Board of Directors of the Company has, after receiving financial and legal advice and following receipt of the unanimous recommendation of the Special Committee, unanimously (a) approved this Agreement and the transactions contemplated by this Agreement and the Exhibits hereto, including the Arrangement, the Reverse Stock Split, the Redomiciliation, the Private Placement, the Arena Reorganization, and the adoption or execution, as applicable, of the Delaware Certificate of Incorporation, Delaware Bylaws, Investor Rights Agreement, the Arena Agreements and the Salem Group Agreements; (b) declared that it is in the best interests of the Company that the Company enter into this Agreement and consummate the transactions contemplated by this Agreement and the Arrangement, including the Reverse Stock Split, the Redomiciliation, the Private Placement, the Arena Reorganization and the adoption or execution, as applicable, of the Delaware Certificate of Incorporation, Delaware Bylaws, the Investor Rights Agreement, the Arena Agreements and the Salem Group Agreements, on the terms and subject to the conditions set forth in this Agreement and the Exhibits hereto; and (c) recommended to the Company Shareholders that they vote in favor of the approval of (i) the Arrangement Approval ~~Resolutions,~~ (ii) the Resolution, (ii) the Private Placement Approval Resolution, (iii) the Arena Reorganization Approval Resolution, and (iv) the adoption by the Company of the amended and restated equity incentive plan contemplated by Section 6.19 (the “New Equity Incentive Plan”), ~~and (iii) the election of each of the Investor Nominees (as defined herein) and the Mutually Acceptable Independent Nominee (as defined herein) to the Board of Directors of the Company~~ conditional on the completion of the Private Placement;

...

WHEREAS, concurrently with the execution and delivery of this Agreement and as a condition to the Investor’s willingness to enter into this Agreement, certain Company Shareholders have entered into voting and support agreements with the Investor and the Company (each, a “Voting and Support Agreement”), pursuant to which, among other things, such shareholders have agreed to vote all of their Company Common Shares in favor of the approval of (a) the Plan of Arrangement and the Reverse Stock Split, and Redomiciliation and Private Placement contemplated hereby and thereby, including the Delaware Certificate of Incorporation and the Initial Delaware Bylaws; (b) the New Equity Incentive Plan; and (c) the Private Placement and (e) the election of each of the Investor Nominees and the Mutually Acceptable Independent Nominee to the Board of Directors of the Company;

- b. Section 2.01 is hereby amended as follows:

Closing. ~~(a)~~ The closing of the Arrangement Private Placement (the “Closing”) will take place remotely via the electronic exchange of documents on the later of (i) December 1, 2024 and (ii) the tenth (10<sup>th</sup>) business day after satisfaction or (to the extent permitted by Law) waiver of the conditions set forth in Article VII (other than those that by their nature are to be satisfied or waived at the Closing, it being understood that the occurrence of the Closing shall remain subject to the satisfaction or waiver of such conditions at Closing), unless another, date or place is agreed to in writing by the Company and the Investor; provided, that the date on which the Closing actually occurs is referred to in this Agreement as the “Closing Date.” ~~(b) The Company shall file the Articles of Arrangement giving effect to the Arrangement on the~~

~~Closing Date and the Arrangement shall become effective commencing at the Effective Time on the Closing Date and will have all of the effects provided by applicable Law.~~

- c. Section 2.02 is hereby amended as follows:

Issuance of and Payment for Securities. Upon the terms and subject to the conditions set forth in this Agreement ~~and the Plan of Arrangement, at the time specified in the Plan of Arrangement, at the Closing,~~ (a) the Investor shall pay to the Company \$250,000,000 (the "Purchase Price") in exchange for the Securities and (b) the Company shall issue and sell to the Investor, free and clear of any and all Liens (except for transfer restrictions imposed by applicable securities Laws), the Securities.

- d. Section 2.03 is hereby amended as follows:

Adjustments to Securities. In the event that, subsequent to the date of this Agreement but prior to the Closing, the Company Common Shares issued and outstanding shall, through a stock dividend, distribution or return, stock split, combination, reclassification, recapitalization, exchange, readjustment of shares or other similar event involving a change in the capital structure of the Company, increase or decrease in number or be changed into or exchanged for a different kind or number of securities, then an appropriate and proportionate adjustment shall be made to the number of Company Common Shares issued to the Investor pursuant to ~~the Arrangement~~ Section 2.02, the number of Company Common Shares issuable pursuant to the Par Warrants and the Incentive Warrants and the exercise prices of the Par Warrants and Incentive Warrants to provide the Investor with the same economic effect contemplated by this Agreement prior to such event. Without limiting the generality of the foregoing, the parties acknowledge and agree that, following the implementation of the Reverse Stock Split, pursuant to the Private Placement the Investor will receive (a) 11,979,825 Company Common Shares; (b) Par Warrants to purchase 1,303,676 Company Common Shares having an exercise price of C\$24.12 per Company Common Share; and (c) Incentive Warrants to purchase 3,911,029 Company Common Shares having an exercise price of C\$28.50 per Company Common Share.

- f. Section 2.04(a) is hereby amended as follows:

~~Upon the terms and subject to the conditions set forth in this Agreement and the Plan of Arrangement, at the time specified in the Plan of Arrangement, Prior to Closing,~~ the Company shall file with the Secretary of State of the State of Delaware the Delaware Certificate of Incorporation and have the Delaware Certificate of Incorporation become effective in accordance with the laws of the State of Delaware as of the time specified in the Plan of Arrangement.

- g. Subsection (vi) and (vii) of Section 2.04(b) are hereby amended as follows:

(vi) the PSU Award Agreement and Notice of Grant relating to the Consulting Agreement, duly executed by the Company; ~~and~~

...

(vii) certain directors of the Company, as agreed in writing between the Company and the Investor, shall have provided their resignations in a manner that allows for the orderly replacement of such directors following completion of the Private Placement with the Investor Nominees and Mutually Acceptable Independent Nominee, as provided for herein, together with releases in favor of the Company, conditional on closing of the Private Placement and

effective immediately following completion of the Private Placement, each in form and substance on such terms as are satisfactory to the Investor, acting reasonably; ~~and~~ and

- h. Section 2.04(b) is hereby amended by adding the following new clause (viii):

(viii) a copy of the resolutions adopted by the Board of Directors of the Company (i) increasing the size of the Board of Directors of the Company from seven (7) members to eleven (11) members, (ii) accepting the director resignations delivered pursuant to Section 2.04(b)(vii) hereof, (iii) appointing (A) each of the Investor Nominees and the Mutually Acceptable Independent Nominee to the Board of Directors of the Company as provided for herein, and (B) Chinh Chu as chairman and Ian Delaney as vice chairman of the Board of Directors of the Company, in each case effective upon consummation of the Private Placement; and (iv) approving the amended and restated bylaws of the Company in accordance with the DGCL and in the form set forth on Exhibit P to this Agreement (the "A&R Delaware Bylaws").

- i. Section 2.04(e)(ii) is hereby amended as follows:

~~Copies~~ copies of the Salem Group Agreements, duly executed by the Investor and/or its applicable Subsidiaries party thereto; provided that if the closing under the Madison Purchase Agreement has not occurred prior to the Closing (or if such closing has occurred but the Governmental Authorizations set forth on Section 6.08(a) of the Company Letter have not yet been obtained), the foregoing reference to the Salem Group Agreements shall exclude the Investment Management Agreement, the Termination Letter Agreement and the Sub-Investment Management Agreement.

- j. The introduction to Section 2.04(f) is hereby amended as follows:

To effect the purchase and sale of Securities as set forth in Section 2.02 and the other transactions contemplated by this Agreement, upon the terms and subject to the conditions set forth in this Agreement ~~and the Plan of Arrangement, at the applicable time set out in the Plan of Arrangement,~~ at the Closing;

- k. Section 3.03(d)(ii) is hereby amended as follows:

Prior to the date hereof, the Investor has made available to the Company accurate and complete copies of a fully executed commitment letter from the Equity Provider, dated as of the date hereof (the "Equity Commitment Letter") pursuant to which the Equity Provider has agreed, subject to the terms and conditions thereof, to invest or cause to be invested in the Investor the amounts set forth therein (collectively, the "Equity Financing"). The Equity Commitment Letter provides that the Company is a third party beneficiary thereof. Except as expressly set forth in the Equity Commitment Letter, there are no conditions precedent to the obligations of the Equity Provider to provide the Equity Financing. The aggregate proceeds contemplated by the Equity Commitment Letter will provide the Investor with cash proceeds on the Closing Date sufficient to (A) pay the aggregate Purchase Price and all other amounts required to be paid or repaid by the Investor or its Affiliates on the Closing Date in connection with the transactions contemplated hereby, (B) pay any and all fees and expenses required to be paid by the Investor in connection with the transactions contemplated hereby and the Equity Financing and (C) satisfy all of the other payment obligations of the Investor contemplated hereunder and payable on the Closing Date. In no event shall the receipt of the Equity Financing be a condition to any of the obligations of the Investor hereunder. The Investor acknowledges and agrees that ~~the~~ the obtaining of Equity Financing is not a condition to the Closing. As of the date of this Agreement, the Equity Commitment Letters are valid and binding

on the Investor and, to the Knowledge of the Investor, each other party thereto and the Equity Commitment Letters are in full force and effect. As of the date of this Agreement, there is no default under any of the Equity Commitment by the Investor or, to the Knowledge of the Investor, any other party thereto and no event has occurred that with the lapse of time or the giving of notice or both, would constitute a default thereunder by the Investor or, to the Knowledge of the Investor, any other party thereto. As of the date of this Agreement, none of the Equity Commitment Letters has been terminated, repudiated, rescinded, modified, amended, withdrawn, supplemented or restated and none of the respective commitments under any of the Equity Commitment Letters has been terminated, repudiated, rescinded, modified, amended, withdrawn, supplemented or restated in any respect.

- l. Section 4.03 is hereby amended as follows:

*Reorganization.* From and after the date of this Agreement and until the Closing, each of the Company, Arena and BP Holder shall use its commercially reasonable efforts to take or cause to be taken all actions necessary to consummate the transactions comprising the Reorganization, in each case that are contemplated to occur prior to the Closing ~~or at the time specified in the Plan of Arrangement, as applicable.~~ Such actions described in this Section 4.03 shall be subject to the Investor's right to review and comment on drafts of all material implementing documents, which comments the Company shall consider in good faith; provided that (i) the Company shall be under no obligation to accept any such comments provided by Investor and (ii) in no event shall the foregoing delay the Closing.

- m. Section 4.04 is hereby amended as follows:

*Equity Incentive Awards.* The Company shall take such actions as are necessary under the terms of the Company LTIP and the Plan of Arrangement to facilitate the surrender and cancellation of all restricted share units (whether vested or unvested) as at the effective time of the Arrangement ~~outstanding as of the Effective Time~~ on the terms contemplated in the Plan of Arrangement.

- n. Section 6.01(b) is hereby amended as follows:

that the required level of approval for the Arrangement Approval ~~Resolutions~~ Resolution shall be the Arrangement Shareholder Approval;

- o. Subsections (c), (i) and (l) of Section 6.02 are hereby amended as follows:

(c) The Company Circular shall (i) state that (A) the Special Committee has unanimously determined, after receiving legal and financial advice, that the Arrangement, the Private Placement, the New Equity Incentive Plan, the Arena Reorganization and the other transactions contemplated by this Agreement are in the best interests of the Company and unanimously recommended that the Board of Directors of the Company determine that the Arrangement, the Private Placement, the New Equity Incentive Plan, the Arena Reorganization and the other transactions contemplated by this Agreement are in the best interests of the Company, approve entering into this Agreement and recommend that the Company Shareholders vote in favor of the Approval Resolutions (the "Special Committee Recommendation"); and (B) the Board of Directors has unanimously determined, after receiving legal and financial advice, that the Arrangement, the Private Placement, the New Equity Incentive Plan, the Arena Reorganization and the other transactions contemplated herein are in the best interests of the Company and that the Board of Directors of the Company unanimously recommends that Company Shareholders vote in favor of the Approval Resolutions (the "Company Recommendation"); (ii) include statements that each of the

*Locked-Up Shareholders has signed a Voting and Support Agreement; (iii) contain a copy of the Interim Order; (iv) contain such information as may be required to allow the Company to rely upon the exemption from registration provided by Section 3(a)(10) of the Securities Act with respect to the Company Common Shares; and (v) include a copy of the Fairness Opinion. Neither the Board of Directors nor the Special Committee shall withdraw, withhold, qualify or modify in a manner adverse to the Investor, or publicly propose to withdraw, withhold, qualify or modify in a manner adverse to the Investor, the Special Committee Recommendation or the Company Recommendation.*

...

*(i) The Company shall solicit proxies of the Company Shareholders in favor of the Arrangement, the Private Placement, the Arena Reorganization and all other matters to be approved by the Company Shareholders as set out in the Approval Resolutions, solicit proxies against any resolution submitted by any Company Shareholder that is inconsistent with the Approval Resolutions and the completion of the transactions contemplated by this Agreement, and take all other actions reasonably requested by the Investor to obtain the approval of the Approval Resolutions by the Company Shareholders, if so requested, including using the services of investment dealers and proxy solicitation agents, and cooperating with any persons engaged by the Investor, to solicit proxies in favor of the approval of the Approval Resolutions, and take all other actions reasonably requested by the Investor to obtain the Required Shareholder Approvals and such other matters as may be necessary to be approved in connection with the Arrangement, the Private Placement, the Arena Reorganization and the other matters contemplated by this Agreement.*

...

*(l) The Company shall promptly advise the Investor of any written or material oral communication from or claims brought by (or threatened to be brought by) any person in opposition to the Arrangement, the Private Placement, the Arena Reorganization or any other transactions contemplated by this Agreement, any written notice of dissent or purported exercise of any Dissent Rights received by the Company in relation to the Arrangement and any withdrawal of Dissent Rights received by the Company and, if permissible by Law, will provide the Investor with an opportunity to review and comment upon any written communications sent by or on behalf of the Company to any such person. The Company shall not make any payment or settlement offer, or agree to any payment or settlement prior to Closing with respect to Dissent Rights in relation to the Arrangement without the prior written consent of the Investor (not to be unreasonably withheld, conditioned or delayed).*

p. Subsections (a), (b)(ii), (c) and (d) of Section 6.10 are hereby amended as follows:

*(a) Upon the terms set forth in this Agreement, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all actions that are necessary, proper or advisable to consummate and make effective the Arrangement, the Private Placement, the Arena Reorganization and the other transactions contemplated by this Agreement, including using its reasonable best efforts to accomplish the following: (i) the satisfaction of the conditions precedent set forth in Article VII, (ii) the obtaining of all necessary actions or nonactions, waivers, consents, approvals, orders and authorizations from, and the giving of any necessary notices to, Governmental Entities and other persons and the making of all necessary registrations, declarations and filings (including filings under the HSR Act, filing of the CMA in connection with the FINRA Approval, the State Broker-Dealer Filings and other registrations, declarations and filings with, or notices to, Governmental Entities, if any), (iii) the taking of all reasonable steps to provide any responses and supplemental information*

requested by a Governmental Entity, including participating in meetings with officials of such entity in the course of its review of this Agreement, the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated by this Agreement, in a timely manner, (iv) the taking of all reasonable steps as may be necessary to avoid any suit, claim, action, investigation or proceeding by any Governmental Entity or other third party and (v) the obtaining of all necessary consents, approvals or waivers from any third party. Without limiting the generality of the foregoing, as soon as reasonably practicable following the date of this Agreement, and in any event no later than ten (10) business days after the date hereof (or such other date as mutually agreed by the parties), the Company and Arena shall cause the Arena Broker-Dealer to prepare and submit the CMA consistent with the requirements of FINRA Rule 1017(a)(4).

...

(b)(ii) for all other purposes, any condition, action, limitation, restriction, requirement or qualification imposed by a Governmental Entity in connection with its grant of any Governmental ~~Approval~~Authorization that, individually or in the aggregate with any such other conditions, actions, limitations, restrictions, requirements or qualifications imposed by a Governmental Entity in connection with its grant of any Governmental ~~Approval~~Authorization, that, to the extent it cannot be mitigated through the Resolution Process, (A) with respect to the Investor, obligates the Investor or any of its Affiliates to (1) for purposes of complying with Laws relating to competition, sell or otherwise dispose of, or hold separate, any business, assets or properties that would or would reasonably be expected to have a material and adverse effect on the Investor and its Affiliates (including the Company and its Subsidiaries following the Closing), taken as a whole or (2) agree to any limitation or restriction on its business that would or would reasonably be expected to have a material and adverse effect on the Investor and its Affiliates (including the Company and its Subsidiaries following the Closing), taken as a whole or (B) with respect to the Company, obligates the Company or any of its Affiliates to agree to any limitation or restriction on its business that would or would reasonably be expected to have a material and adverse effect on the Company and its Subsidiaries (including the Investor and its Affiliates), taken as a whole. Prior to the Investor or the Company being entitled to assert that a Burdensome Condition has been imposed, the parties shall follow the Resolution Process. For the avoidance of doubt, any reasonable steps the Investor or the Company, as applicable, agrees to take through the Resolution Process for the mitigation of any potential Burdensome Condition(s) shall not themselves constitute a Burdensome Condition hereunder, but shall be taken into account in determining whether any restriction, condition, limitation or requirement constitutes a Burdensome Condition hereunder.

...

(c) In connection with and without limiting the generality of the foregoing, the Company shall, if any state takeover statute or similar statute or regulation is or becomes applicable to this Agreement or any of the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated by this Agreement, including the Voting and Support Agreement or the transactions contemplated thereby, take all actions necessary to ensure that the Arrangement, the Private Placement, the Arena Reorganization and the other transactions contemplated by this Agreement may be consummated as promptly as practicable on the terms contemplated by this Agreement and otherwise to eliminate or minimize the effect of such statute or regulation on this Agreement, the Voting and Support Agreement, the Arrangement, the Private Placement, the Arena Reorganization and the other transactions contemplated by this Agreement and such other agreements.

...

(d) Each party hereto shall promptly notify the other party in writing of (i) any notice or other communication from any person alleging that the consent (or waiver, permit, exemption, Order, approval, agreement, amendment or confirmation) of such person (or another person) is or may be required in connection with this Agreement, the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby (and contemporaneously provide a copy of any such written communication or notice to the other party); (ii) unless prohibited by Law, any notice or other communication from any Governmental Entity in connection with this Agreement, the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby (and contemporaneously provide a copy of any such written communication or notice to the other party); or (iii) any material filing, actions, suits, claims, investigations or proceedings commenced or, to its knowledge, threatened against, such party relating to this Agreement, the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby.

q. Section 6.12 is hereby amended as follows:

Public Announcements. The parties agree that the initial press release to be issued with respect to the transactions contemplated by this Agreement shall be in the form heretofore agreed to by the parties. The Investor, on the one hand, and the Company, on the other hand, shall, to the extent at all reasonably practicable, consult with each other before making, and give each other a reasonable opportunity to review and comment upon, any press release or other public statements with respect to this Agreement, the Arrangement, the Private Placement, the Arena Reorganization and the other transactions contemplated by this Agreement, and shall not issue any such press release or make any such public statement without the other party's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed), except as may be required by applicable Law, court process or by obligations pursuant to the rules of the TSXV. Notwithstanding the foregoing, the Investor and its Affiliates shall be permitted to make communications to, and provide ordinary course information to any existing or prospective equityholders, general and limited partners, members, or managers of the applicable Investor, in each case, who are subject to customary confidentiality restrictions.

r. Section 6.15(a) is hereby amended as follows:

Each party shall use commercially reasonable efforts to: (i) defend all lawsuits or other legal, regulatory or other proceedings against itself or any of its Subsidiaries challenging or affecting this Agreement or the consummation of the transactions contemplated hereby; (ii) appeal, overturn or have lifted or rescinded any injunction or restraining order or other Order, including Orders relating to itself or any of its Subsidiaries which may materially adversely affect the ability of the Parties to consummate the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby; and (iii) appeal or overturn or otherwise have lifted or rendered non-applicable in respect of the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby, any Law that makes consummation of the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby illegal or otherwise prohibits or enjoins the Company or the Purchaser from consummating the Arrangement, the Private Placement, the Arena Reorganization or the other transactions contemplated hereby.

s. The first sentence of Section 6.18 is hereby amended as follows:

Financing Cooperation. From the date hereof until the earlier of the Closing or the valid termination of this Agreement, upon the request of the Investor, the Company shall, and shall cause its Subsidiaries and its and their respective Representatives to, reasonably cooperate

with the Investor and its Representatives in connection with seeking syndication, co-investment or similar commitments from other investors relating to the Investor's funding pursuant to this Agreement ~~and the Arrangement~~, including by: (i) participating, upon reasonable advance notice, in meetings, presentations, due diligence sessions and sessions with potential investors; (ii) providing to the Investor on a timely basis financial and accounting information reasonably requested by the Investor to share with such other investors; (iii) cooperating in reasonable marketing efforts and assisting in the preparation of related marketing materials; and (iv) facilitating the production of due diligence materials that the Investor may reasonably request; provided, however, that nothing in this Agreement shall require such cooperation to the extent it would, in the Company's sole judgment, interfere unreasonably with the business or operations of the Company Group; and provided, further, that, notwithstanding anything in this Agreement to the contrary, no member of the Company Group shall (A) be required to pay any fees (including commitment or other similar fees) or to give any indemnities or incur any liabilities prior to the Closing, (B) be required to incur any expense or other liability in connection with such cooperation, (C) be required to deliver any audited financial statements, to the extent not already available to the Company, or "pro forma" financial statements or information, (D) be required to deliver or obtain opinions of internal or external counsel, (E) be required to provide access to or disclose information where the Company determines that such access or disclosure could jeopardize the attorney-client privilege or contravene any Law or Contract, (F) be required to waive or amend any terms of this Agreement or any other Contract to which any member of the Company Group is party, (G) be required to allow any investor or syndicate member access to the personnel or facilities of any member of the Company Group that is greater in scope or frequency than the access afforded to the Investor under this Agreement, (H) be required to make any representations in connection therewith, (I) be required to make any disclosure not required under this Agreement, (J) be required to waive or modify any terms of this Agreement or any other Contract to which any member of the Company Group is a party, (K) be required to provide any cooperation to the extent it would unreasonably interfere in any respect with the ongoing operations of any member of the Company Group, or (L) be required to take any action or to enter into any documents, instrument, agreement or certificates effective prior to the Closing.

- t. Section 6.20 is hereby amended as follows:

Post-Private Placement Board of Directors. The parties hereto shall take all actions necessary, ~~including, with respect to the Company, if required, obtaining the Required Shareholder Approvals at the Company Meeting,~~ to cause the Board of Directors of the Company immediately following the completion of the Private Placement to consist of (a) five (5) directors selected and nominated by the Investor, (b) one (1) Independent Director (as defined in the Investor Rights Agreement) mutually acceptable to the Investor and the Company (as determined in accordance with Section 6.22), (c) the Company's Chief Executive Officer, (d) any additional Independent Directors necessary to meet applicable securities regulatory and stock exchange requirements, as selected by the Company's Board of Directors and (e) eleven (11) directors in the aggregate (collectively, the "Post-Private Placement Board").

- u. Section 6.21 is hereby amended as follows:

Investor Nominees. The Investor shall, within fourteen (14) days prior to the mailing of the Company Circular, designate five (5) nominees ~~for election to be identified in the Company Circular as the Investor's designees~~ to the Board of Directors of the Company effective at the Company Meeting Closing (the "Investor Nominees"). The Company ~~and the Investor~~ shall use best efforts to take all action necessary to cause the Investor Nominees to be ~~elected~~ appointed to the Board of Directors of the Company effective immediately following the completion of the Private Placement ~~at the Company Meeting~~. In the event any such

Investor Nominee declines ~~election or~~ appointment to the Company Board of Directors, is deceased or becomes incapacitated prior to ~~election or~~ appointment, the Investor shall, within fourteen (14) days after notification thereof, designate a replacement nominee for such Investor Nominee for ~~election~~ appointment to the Board of Directors of the Company at the Company Meeting. Each Investor Nominee shall meet the applicable qualification requirements to serve as a director under the rules of the TSXV.

- v. The introduction to Section 6.22 is hereby amended as follows:

Mutually Acceptable Independent Director. The Company shall nominate one Independent Director nominee mutually acceptable to the Company and the Investor (the "Mutually Acceptable Independent Nominee") for ~~election~~ appointment to the Board of Directors of the Company ~~at the Company Meeting.~~ The Company and the Investor shall use best efforts to take all action necessary to cause the Mutually Acceptable Independent Nominee to be ~~elected~~ appointed to the Board of Directors of the Company at the ~~Company Meeting~~ Closing, unless such Mutually Acceptable Independent Nominee declines ~~election or~~ appointment to the Company Board of Directors, is deceased or becomes incapacitated prior to ~~election or~~ appointment, in which case the Investor and the Company shall select a new Mutually Acceptable Independent Nominee for ~~election~~ appointment to the Board of Directors of the Company in accordance with this Section 6.22. The Mutually Acceptable Independent Nominee shall be selected in accordance with the following procedures.

- w. The introduction to, and subsections (a) and (c) of Section 7.01 are hereby amended as follows:

Conditions to Each Party's Obligation to Effect the Private Placement. The respective obligation of each party to effect the Private Placement ~~and the Plan of Arrangement~~ is subject to the satisfaction or waiver on or prior to the Closing of the following conditions:

(a) Shareholder Approval. The ~~Arrangement Shareholder Required Shareholder~~ Approvals ~~shall have been obtained in accordance with the Interim Order and the New Equity Plan Approval~~ shall have been obtained.

(c) Articles of Arrangement. The Articles of Arrangement ~~to be~~ shall have been sent to the Registrar under the ABCA, and the Certificate of Arrangement shall have been received, in each case, in accordance with this Agreement ~~shall be in a form and substance satisfactory to the Company and the Investor, each acting reasonably~~ and applicable Law.

- x. The introduction to Section 7.02 is hereby amended as follows:

Conditions to Obligations of the Investor. The obligations of the Investor to effect the Private Placement ~~and the Plan of Arrangement~~ are further subject to the satisfaction or waiver on or prior to the Closing of the following conditions:

- y. Section 7.02(c) is hereby amended as follows: "[INTENTIONALLY OMITTED]"

- z. Section 7.02(e) is hereby amended as follows:

Ancillary Documents. The agreements and deliverables set forth in Section 2.04(b), ~~and~~ Section 2.04(c) and 2.04(f)(ii) shall have been executed and/or delivered, as applicable, by the Company, Arena and/or their applicable respective Subsidiaries.

- aa. Section 7.02(h) is hereby amended by adding the following new clause (h):

Company Board of Directors. The Board of Directors of the Company shall consist of eleven (11) members and Chinh Chu, Douglas Newton, Matthew Skurbe, Richard DiBlasi and Deanna Mulligan shall each have been duly appointed to the Board of Directors of the Company. Chinh Chu and Ian Delaney shall have been duly appointed as chairman and vice chairman, respectively, of the Board of Directors of the Company.

bb. The introduction to Section 7.03 is hereby amended as follows:

*Conditions to Obligation of the Company. The obligation of the Company to effect the Private Placement ~~and the Plan of Arrangement is~~ further subject to the satisfaction or waiver on or prior to the Closing of the following conditions:*

cc. The definitions set forth in Section 10.02 are hereby amended as follows:

(h) Approval Resolutions” means the Arrangement Approval ~~Resolutions~~Resolution, the Private Placement Approval Resolution, the Arena Reorganization Approval Resolution, and the New Equity Plan Approval ~~Resolutions~~Resolution.

(g)“Arena Reorganization Approval” means the requisite approval of a simple majority of the votes cast on the Arena Reorganization Approval Resolution by Company Shareholders present in person or represented by proxy at the Company Meeting (excluding for this purpose votes cast by any Company Shareholders that are required to be excluded in accordance with Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions).

(r)“Arena Reorganization Approval Resolution” means the resolution of the Company Shareholders that is to be considered at the Company Meeting with respect to the approval of the Arena Reorganization in the form set out in Exhibit P.

(s)(g)“Arrangement” means the arrangement under section 193 of the ABCA on the terms and subject to the conditions set out in the Plan of Arrangement, subject to any amendments or variations to the Plan of Arrangement made in accordance with the terms of this Agreement and the Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of (x) if this Agreement has not been terminated in accordance with its terms, the Company and the Investor, each acting reasonably, or (y) if this Agreement has been terminated in accordance with its terms, ~~with the prior written consent of the Company, the Consenting Parties.~~

(t)(r)“Arrangement Approval ~~Resolutions~~Resolution” means the special ~~resolutions~~resolution of the Company Shareholders that ~~are~~ is to be considered at the Company Meeting with respect to ~~(i) the approval of the Plan of Arrangement (other than the matters related to the Private Placement) and (ii) the approval of the Plan of Arrangement (with respect to the matters related to the Private Placement),~~ substantially in the ~~forms~~form set out in ~~Exhibit F and Exhibit G, respectively.~~

(u)(s)“Arrangement Shareholder Approval” means the requisite approval of (i) two-thirds of the votes cast on the Arrangement Approval ~~Resolutions~~Resolution by Company Shareholders present in person or represented by proxy at the Meeting ~~obtained in accordance with the Interim Order;~~ (ii) ~~a simple majority of the votes cast on the Arrangement Approval Resolutions by Company Shareholders present in person or represented by proxy at the Company Meeting (excluding the votes cast by the Investor and any other Company Shareholders that are required to be excluded in accordance with the policies of the TSXV); and (iii) if and to the extent required, a majority of the votes cast on the~~

~~Arrangement Resolution by Company Shareholders present in person or represented by proxy at the Company Meeting (excluding for this purpose the votes cast by any Company Shareholders that are required to be excluded in accordance with Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions).~~

~~(v)~~ ~~(t)~~ “Articles of Arrangement” means the articles of arrangement of the Company in respect of the Arrangement, required by the ABCA to be sent to the Registrar after the Final Order is made, which shall include the Plan of Arrangement and otherwise be in a form satisfactory to the ~~Company and the Investor, each acting reasonably~~ Consenting Parties.

~~(qq)~~ “Consenting Parties” means ~~(a) if this Agreement has not been terminated in accordance with its terms, the Company and the Investor, each acting reasonably, or (b) if this Agreement has been terminated in accordance with its terms, the Company.~~

~~(vv)~~ ~~(ss)~~ “Effective Time” means ~~the time on the Closing Date that the Arrangement becomes effective, as set out in the Plan of Arrangement.~~

~~(ddd)~~ ~~(aaa)~~ “Final Order” means the final order of the Court in a form acceptable to the ~~Company and the Investor, each acting reasonably,~~ Consenting Parties approving the Arrangement, as such order may be amended by the Court (with the consent of ~~both~~ the ~~Company and the Investor, each acting reasonably~~ Consenting Parties) at any time prior to the Closing or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to ~~both~~ the ~~Company and the Investor, each acting reasonably~~ Consenting Parties) on appeal.

~~(kkk)~~ ~~(hhh)~~ “Interim Order” means the interim order of the Court in a form acceptable to the ~~Company and the Investor, each acting reasonably,~~ Consenting Parties providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified or varied by the Court with the consent of the ~~Company and the Investor, each acting reasonably~~ Consenting Parties.

~~(ggg)~~ ~~(ddd)~~ “Plan of Arrangement” means the plan of arrangement, substantially in the form attached hereto as Exhibit J, subject to any amendments or variations to such plan made in accordance with this Agreement, if applicable, and the Plan of Arrangement or made at the direction of the Court in the Final Order with the prior written consent of ~~(i) if this Agreement has not been terminated in accordance with its terms, the Company and the Investor, each acting reasonably, or (ii) if this Agreement has been terminated in accordance with its terms, with the prior written consent of the Company,~~ the Consenting Parties.

~~(jjj)~~ “Private Placement Approval” means the requisite approval of a simple majority of the votes cast on the Private Placement Approval Resolution by Company Shareholders present in person or represented by proxy at the Company Meeting (excluding for this purpose the votes cast by the Investor and any other Company Shareholders that are required to be excluded in accordance with the policies of the TSXV).

~~(kkk)~~ “Private Placement Approval Resolution” means the resolution of the Company Shareholders that is to be considered at the Company Meeting with respect to the approval of the Private Placement in the form set out in Exhibit G.

~~(rrr)~~ ~~(mmm)~~ “Required Shareholder Approvals” means:

- (i) the Arrangement Shareholder Approval;

- (i) [the Private Placement Approval;](#)
- (ii) [the Arena Reorganization Approval;](#)
- (iii) the New Equity Plan Approval; [and](#)
- (iv) any other approvals in respect of the Transaction required under Multilateral Instrument 61-101 – Protection of Minority Security Holders in Special Transactions and/or the rules and policies of the TSXV.

dd. The title of Exhibit G to the Agreement is hereby amended as follows:

**Form of ~~Arrangement Approval Resolutions (Private Placement)~~ [Approval Resolution](#)**

- II. ***Exhibits to Investment Agreement.*** The Investor and the Company hereby agree that (i) the Form of Par Warrant attached as Exhibit A to the Agreement is hereby replaced with the form appended hereto as Annex I; (ii) the Form of Incentive Warrant attached as Exhibit B to the Agreement is hereby replaced with the form appended hereto as Annex II; (iii) the Plan of Arrangement attached as Exhibit J to the Agreement is hereby amended and restated in the form appended hereto as Annex III; (iv) the Form of Delaware Certificate of Incorporation attached as Exhibit C to the Agreement is hereby replaced with the form appended hereto as Annex IV; (v) the Form of Delaware Bylaws attached as Exhibit D to the Agreement is hereby replaced with the form appended hereto as Annex V; (vi) the Form of Arrangement Approval Resolution attached as Exhibit F to the Agreement is hereby replaced with the form attached hereto as Annex VI; (vii) the Form of Private Placement Approval Resolution attached as Exhibit G to the Agreement is hereby replaced with the form attached hereto as Annex VII; (viii) a new Exhibit P shall be added as an exhibit to the Agreement in the form appended hereto as Annex VIII; and (ix) a new Exhibit Q shall be added as an exhibit to the Agreement in the form appended hereto as Annex IX.

This Amending Agreement shall only serve to amend and modify the terms of the Agreement (including the exhibits thereto) to the extent specifically provided herein. All terms, conditions, provisions and references of and to the Agreement which are not specifically modified and/or amended herein shall remain in full force and effect and shall not be altered by any provisions herein contained.

*[Signature Page Follows]*

Please acknowledge your agreement with the foregoing by executing this Letter Agreement in the place provided for your signature below.

**Wembley Group Partners, LP,**

By: Wembley Group Partners GP, LLC, as its General Partner

*(Signed) "Chinh Chu"*

\_\_\_\_\_  
Name: Chinh Chu

Title: Authorized Signatory

**The Westaim Corporation**

By:

\_\_\_\_\_  
Name: J. Cameron MacDonald

Title: Chief Executive Officer

**Arena Investors Group Holdings, LLC**

By:

\_\_\_\_\_  
Name: Daniel B. Zwirn

Title: Chief Executive Officer

\_\_\_\_\_  
Daniel B. Zwirn

\_\_\_\_\_  
Lawrence Cutler

Please acknowledge your agreement with the foregoing by executing this Letter Agreement in the place provided for your signature below.

**Wembley Group Partners, LP,**

By: Wembley Group Partners GP, LLC, as its General Partner

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Name: Chinh Chu  
Title: Authorized Signatory

**The Westaim Corporation**

By: *(Signed) "J. Cameron MacDonald"*

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Name: J. Cameron MacDonald  
Title: Chief Executive Officer

**Arena Investors Group Holdings, LLC**

By: *(Signed) "Daniel B. Zwirn"*

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Name: Daniel B. Zwirn  
Title: Chief Executive Officer

*(Signed) "Daniel B. Zwirn"*

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Daniel B. Zwirn

*(Signed) "Lawrence Cutler"*

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Lawrence Cutler

ANNEX I  
FORM OF PAR WARRANT

**THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING OR OTHERWISE HOLDING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE WESTAIM CORPORATION (THE "COMPANY") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH ALL LOCAL LAWS AND REGULATION, (C) IN ACCORDANCE WITH THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS, (D) IN ANOTHER TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS, OR (E) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND, IN THE CASE OF (C) OR (D), THE HOLDER HAS PRIOR TO SUCH TRANSFER FURNISHED TO THE COMPANY AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO SUCH EFFECT.**

## COMMON STOCK PURCHASE WARRANT

### THE WESTAIM CORPORATION

Warrant Shares: \_\_\_\_\_ Initial Issuance Date: \_\_\_\_\_, 20\_\_

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) represents [●] common stock purchase warrants of The Westaim Corporation (the “Company”), and certifies that, for value received, \_\_\_\_\_ or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the “Initial Issuance Date”) and on or prior to 5:00 p.m. (New York City time) on \_\_\_\_\_, 20\_\_ (the “Expiry Time”)¹ but not thereafter, to subscribe for and purchase from the Company, up to \_\_\_\_\_ shares of common stock of the Company (the “Common Shares”) (as subject to adjustment hereunder, the “Warrant Shares”). The purchase price of one Common Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

#### Section 1. Definitions; Interpretation and Construction.

(a) Unless otherwise specified herein, all Section, clause and Schedule references used in this Warrant are to the preamble, sections, clauses and schedules to this Warrant.

(b) References to “dollars” and “C\$” are to Canadian dollars and references to “U.S. dollars” and “\$” are to United States dollars. All amounts in this Warrant may be paid in either Canadian dollars or U.S. dollars. In the event the Exercise Price and any other amounts, costs, fees and expenses incurred and/or payable by the Company or the Holder pursuant to this Warrant are denominated in Canadian dollars, the U.S. dollar equivalent for the Exercise Price and such amounts, costs, fees and expenses shall be determined by converting such other currency to U.S. dollars at the daily average rate of exchange reported by the Bank of Canada for conversion of Canadian dollars into U.S. dollars on the Business Day prior to the payment of the applicable amount.

(c) Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Investor Rights Agreement, dated [●] [●], 202[●], (as may be amended or restated from time to time, the “Investor Rights Agreement”), among the Company, Arena Investors Group Holdings, LLC and Wembley Group Partners, LP.

(d) Any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends.

#### Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Issuance Date

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¹ To be 5:00 p.m. New York City time on the date that is five years from the Initial Issuance Date (i.e., closing of the transaction).

and on or before the Expiry Time (subject to Section 2(e)) by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form of Exhibit A hereto (the “Notice of Exercise”). Within one (1) Business Day following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a Canadian or United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Business Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per Common Share under this Warrant shall be C\$[●], subject to adjustment hereunder (the “Exercise Price”).

(c) Cashless Exercise. At the time of exercise hereof, the Holder may elect to exercise this Warrant, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

i. (A) = the average VWAP for the three (3) Business Days immediately preceding the date the applicable Notice of Exercise is executed and delivered pursuant to Section 2(a) hereof;

ii. (B) = the Exercise Price of this Warrant, as adjusted hereunder; and

iii. (X) = the number of Warrant Shares that would be issuable upon such exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the U.S. Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take

any position contrary to this Section 2(c), except to the extent required by applicable law, rules or regulation.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on the Toronto Stock Exchange or the TSX Venture Exchange, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the Toronto Stock Exchange or TSX Venture Exchange as applicable, as reported by Bloomberg L.P. (based on a Business Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (b) if the Common Shares are then listed or quoted on the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market as applicable, as reported by Bloomberg L.P. (based on a Business Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (c) if the Common Shares are listed or quoted on the OTCQB or OTCQX, the volume weighted average price of the Common Shares for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (d) if the Common Shares are not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Shares are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per Common Share so reported, or (e) in all other cases, the fair market value of a Common Share as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company. In the event the VWAP or fair market value pursuant to this provision is denominated in U.S. dollars, the Canadian dollar equivalent for such VWAP or fair market value shall be determined by converting U.S. dollars to Canadian dollars at the daily average rate of exchange reported by the Bank of Canada for conversion of U.S. dollars into Canadian dollars on the Business Day prior to determination.

(d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by its transfer agent to the Holder (a) by crediting the account of the Holder’s or its designee’s balance account with the Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”), if the Company is then a participant in such system, and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder in the United States or (B) this Warrant is being exercised via cashless exercise and the shares are eligible for resale by the Holder in the United States without volume or manner of sale limitations or current public information requirements pursuant to Rule 144, in each case free of restrictive legends, (b) if the Company is not then a participant in the DWAC system, the Warrant Shares shall be represented by (A) one or more fully registered global certificates registered in the name of “CDS & Co.,” as the nominee of CDS Clearing and Depository Services Inc. (“CDS”) to be held by CDS as book-based securities in accordance with the rules and procedures of CDS on behalf of the securities account designated by the Holder to the Company in writing, or (B) a Direct Registration System Advice evidencing the Holder’s ownership of the Warrant Shares or (c) otherwise by physical delivery of

a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by one (1) Business Day after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares; provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within one (1) Business Day following delivery of the Notice of Exercise. To the extent the Company is then a participant in the DWAC system, the Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to, or fails to cause its transfer agent to, transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to, or fails to cause its transfer agent to, transmit to the Holder the Warrant Shares pursuant to an exercise in accordance with the provisions of Section 2(d)(i) above on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, Common Shares to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the Common Shares so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of Common Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder

purchases Common Shares having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Common Shares with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Common Shares upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder. The Company shall pay all transfer agent fees required for processing of any Notice of Exercise and all fees to the Depository Trust Company or CDS (or another established clearing corporation performing similar functions) required for electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its shareholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

(e) Vesting Condition. Notwithstanding anything to the contrary herein, this Warrant may not be exercised at any time prior to such time that the Common Stock Price Target Condition has been met.

### Section 3. Certain Adjustments.

(a) Substantial Issuer Bid. Upon completion of a substantial issuer bid pursuant to Section 5.01 of the Investment Agreement dated October 9, 2024 (the "Investment Agreement"), among the Company, Wembley Group Partners, LP and, solely for purposes of specific sections enumerated therein, Arena Investors Group Holdings, LLC, Dan Zwirn and Lawrence Cutler, the number of Warrant Shares shall be reduced by a number of shares equal to the number obtained by multiplying (i) 999,293 by (ii) the total number of Common Shares purchased by the Company pursuant to such substantial issuer bid divided by 26,647,804, which reduction shall, for the avoidance of doubt, not exceed 999,293 shares. The reduction of Warrant Shares and limitation

thereof pursuant to this Section 3(a) shall be appropriately adjusted for, among other things, the Reverse Stock Split (as defined in the Investment Agreement) and any other stock dividend, distribution or return, stock split, consolidation, combination, reclassification, recapitalization, exchange, readjustment of shares or other similar event involving a change in the capital structure of the Company with respect to the Common Shares.

(b) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Common Shares or any other equity or equity equivalent securities payable in Common Shares (which, for avoidance of doubt, shall not include any Common Shares issued by the Company upon exercise of this Warrant or any other warrant issued by the Company to the Holder or any of its Affiliates (or their respective designees)), (ii) subdivides outstanding Common Shares into a larger number of shares, (iii) consolidates outstanding Common Shares into a smaller number of shares (including by way of reverse stock split), or (iv) issues by reclassification of Common Shares any shares of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of Common Shares (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of Common Shares outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(b) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(b) above, if at any time the Company grants, issues or sells any Convertible Securities or rights to purchase shares, warrants, securities or other property, in each case, pro rata to the record holders of Common Shares (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights (or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of any of its assets (or rights to acquire its assets) or distribution to holders of Common Shares, by way of return of capital or otherwise (including, without limitation, any distribution of cash, shares, evidences of its indebtedness or other securities, property or options by way of a dividend, reclassification, corporate rearrangement, plan of arrangement or scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case (except in the case of a Spin-Off, which is addressed in Section 3(e) below), the Exercise Price shall be reduced, but not below the par value of the Common Stock, by the amount of such Distribution on a per share basis (or in the case of non-cash Distributions, the fair market value thereof (as reasonably determined by the Company's board of directors upon consultation with an accounting, appraisal, investment banking firm or consultant of nationally recognized standing

that is not an Affiliate of the Company and is not otherwise engaged by the Company in connection with such Distribution)).

(e) Spin-Off Adjustments. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of equity securities of any of its Subsidiaries relating to any separation from the Company of such Subsidiary by way of spin-off, spin-out or similar transaction (any such transaction, a “Spin-Off”) then, in each such case, the Holder shall be entitled to participate in and receive such securities in such Spin-Off to the same extent that the Holder would have participated therein if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date of which a record is taken for such Spin-Off (or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the participation in such Spin-Off).

(f) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger, amalgamation, arrangement, business combination or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer, takeover bid or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Shares are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Shares, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Shares or any compulsory share exchange pursuant to which the Common Shares are effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger, amalgamation, plan of arrangement or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Common Shares (not including any Common Shares held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then:

(A) if the Fundamental Transaction is Change of Control Transaction (which includes, for the avoidance of doubt, any transaction described in clauses (i), (ii), (iii) and (v) of Section 3(f)):

(1) if the Common Stock Price Target Condition is satisfied based on the per share fair market value (as reasonably determined by the Company’s board of directors upon consultation with an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is not an Affiliate of the Company and is not otherwise engaged by the Company in connection with such Fundamental Transaction) of such cash, stock, securities and other assets or property (including any contractual or other rights to receive consideration payable in the future), if any, as would have been issued or payable

in such Fundamental Transaction with respect to or in exchange, as applicable, for the Common Shares, the Holder shall receive, upon the consummation of such Fundamental Transaction, for the Warrant Shares that would have been issuable upon the exercise of this Warrant immediately prior to the occurrence of such Fundamental Transaction (assuming, for this purpose, that the Holder had exercised this Warrant in full immediately prior to such Fundamental Transaction pursuant to a cashless exercise under Section 2(c), based on the VWAP of a Warrant Share measured as of immediately prior to the occurrence of such Fundamental Transaction, and elected to participate in full in such transaction), such cash, stock, securities or other assets or property (including any contractual or other rights to receive consideration payable in the future), if any, as would have been issued or payable in such Fundamental Transaction with respect to or in exchange, as applicable, for such number of Warrant Shares (and, if the holders of Common Shares are given any choice as to the cash, stock, securities or other assets or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to such consideration) and, upon the Holder's receipt of all such consideration, if any, in such Fundamental Transaction (which, in respect of any contractual or other rights to receive consideration payable in the future, shall mean the receipt of such rights (rather than the receipt of such underlying consideration)), this Warrant shall immediately and automatically terminate without further action of the parties; or

(2) if the Common Stock Price Target Condition is not satisfied based on the per share fair market value (as reasonably determined by the Company's board of directors upon consultation with an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is not an Affiliate of the Company and is not otherwise engaged by the Company in connection with such Fundamental Transaction) of such cash, stock, securities and other assets or property (including any contractual or other rights to receive consideration payable in the future), if any, as would have been issued or payable in such Fundamental Transaction with respect to or in exchange, as applicable, for the Common Shares, the Holder shall receive, upon the consummation of such Fundamental Transaction and on the date thereof, an amount of cash equal to the Black Scholes Value (as defined below) of this Warrant; provided, however, that if the Fundamental Transaction is not within the Company's control, including not approved by the Company's board of directors, the Holder shall only be entitled to receive from the Company or any Successor Entity, as of the date of consummation of such Fundamental Transaction, the same type or form of consideration (and in the same proportion), at the Black Scholes Value of this Warrant, that is being offered and paid to the holders of Common Shares of the Company in connection with the Fundamental Transaction, whether that consideration be in the form of cash, stock or any combination thereof, or whether the holders of Common Shares are given the choice to receive from among alternative forms of consideration in connection with the Fundamental Transaction. "Black Scholes Value" means the value of this Warrant immediately prior to the date of first public announcement of such Fundamental Transaction, calculated for this purpose assuming that the price of the Common Shares at such time is equal to the per share fair market value (as reasonably determined by the Company's board of directors upon consultation with an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is not an Affiliate of the Company and is not otherwise engaged by the Company in connection with such Fundamental Transaction) of such cash, stock, securities and other assets or property

(including any contractual or other rights to receive consideration payable in the future), if any, as would have been issued or payable in such Fundamental Transaction with respect to or in exchange, as applicable, for the Common Shares, based on the Black Scholes model as calculated by an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is, in the good faith judgment of the holder, qualified to make such calculation, which valuation shall take into account the Common Stock Price Target Condition and not otherwise take into account the impact or occurrence of such Fundamental Transaction.

(B) if the Fundamental Transaction is not a Change of Control Transaction, then, upon any subsequent exercise of this Warrant following such Fundamental Transaction, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of cash, stock, securities or other assets or property, including, as applicable, the number of shares of the successor or acquiring corporation or of the Company, if it is the surviving corporation (such consideration, the “Alternate Consideration”) receivable as a result of such Fundamental Transaction by a holder of the number of Common Shares for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one Common Share in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Shares are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. If this clause (B) is applicable, the Company shall cause any successor entity in such Fundamental Transaction in which the Company is not the survivor (the “Successor Entity”) to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(f) on or prior to the occurrence of such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the Common Shares acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant, other than the Common Stock Price Target Condition, which shall continue to apply to this Warrant, as may be adjusted as described below) prior to such Fundamental Transaction, and with an exercise price which applies the Exercise Price hereunder to such shares of capital stock (but taking into account the relative value of the Common Shares pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction) and with a Common Stock Price Target Condition equitably adjusted based on the same principles used to adjust the exercise price, and which

is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any Fundamental Transaction pursuant to this clause (B), the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the “Company” shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(g) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100<sup>th</sup> of a share, as the case may be. For purposes of this Section 3, the number of Common Shares deemed to be issued and outstanding as of a given date shall be the sum of the number of Common Shares (excluding treasury shares, if any) issued and outstanding.

(h) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Shares, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Shares, (C) the Company shall authorize the granting to all holders of the Common Shares rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any shareholders of the Company shall be required in connection with any reclassification of the Common Shares, any consolidation, amalgamation or merger to which the Company (and all of its Subsidiaries, taken as a whole) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Shares are converted into other securities, cash or property (other than for the sole purpose of changing the Company’s name and/or jurisdiction of incorporation of the Company), or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least Twenty (20) calendar days prior to the applicable record or effective date hereinafter specified (whichever is earlier), a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Shares of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, amalgamation, sale, transfer or share exchange is expected to become effective or close, and the date as

of which it is expected that holders of the Common Shares of record shall be entitled to exchange their Common Shares for securities, cash or other property deliverable upon such reclassification, consolidation, merger, amalgamation, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously issue a press release announcing such material, non-public information and file such release with, as applicable, the Canadian Securities Commissions and/or with the SEC pursuant to a Current Report on Form 6-K or Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

#### Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Business Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder

of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i) registered pursuant to an effective registration statement under the U.S. Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner of sale limitations or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the transfer provisions of the Investor Rights Agreement.

#### Section 5. Miscellaneous.

(a) No Rights as Shareholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a shareholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any share certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or share certificate, if mutilated, the Company will make and deliver a new Warrant or share certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or share certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

#### (d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Shares a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of each securities exchange upon which the Common Shares may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise

of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue) and approved for listing on each securities exchange or automated quotation system on which similar securities are then listed.

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use reasonable best efforts to obtain all such authorizations, exemptions or consents from any securities regulatory authority and securities exchange having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any securities regulatory authorities and securities exchanges having jurisdiction thereof.

(e) Governing Law and Submission to Jurisdiction. This Warrant, the respective rights and obligations of the parties and any claim, controversy or dispute arising under or related to this Warrant shall be governed by, interpreted and enforced in accordance with the Laws of the State of Delaware, without regard to its conflict of laws rules. Each of the parties to this Warrant, by its execution hereof, irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the state and federal courts of the State of Delaware for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Warrant or relating to the subject matter hereof, (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its Subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Warrant or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees not to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Warrant or relating to the subject matter hereof or thereof other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by Delaware law, and agrees that service of process by registered or certified mail, return

receipt requested, at its address specified pursuant to Section 6.1 of the Investor Rights Agreement is reasonably calculated to give actual notice. Notwithstanding the foregoing in this Section 5(e), a party may commence any action in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

(f) Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS WARRANT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 5(f) CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS WARRANT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 5(f) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered under the U.S. Securities Act, and the Holder does not utilize cashless exercise pursuant to Section 2(c) hereof, may have restrictions upon resale imposed by United States federal and state securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Investor Rights Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Investor Rights Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Shares or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. Subject to obtaining any prior approval of the TSX Venture Exchange and/or such other stock exchange on which the Common Shares are listed for trading at such time required under the policies of such exchange, this Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**THE WESTAIM CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NOTICE OF EXERCISE**

TO: THE WESTAIM CORPORATION

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of Canada;

in lawful money of the United States; or

if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_]

OR

The Warrant Shares shall be delivered in accordance with the following CDS electronic delivery instructions:

Registration: CDS & Co., 85 Richmond Street West, Toronto, ON, M5H 2C9

CDS Participant: \_\_\_\_\_

CUID Number: \_\_\_\_\_

Deposit ID: \_\_\_\_\_

Contact Name, Phone & Email: \_\_\_\_\_

79117428.12

***NOTE TO BROKER: DEPOSIT SHOULD BE KEYED INTO CDS AS AN INSTANT DEPOSIT***

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing Entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_  
(Please Print)

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

ANNEX II

FORM OF INCENTIVE WARRANT

**THE SECURITIES REPRESENTED HEREBY AND THE SECURITIES ISSUABLE UPON EXERCISE OF THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN AND WILL NOT BE REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "U.S. SECURITIES ACT"). THE HOLDER HEREOF, BY PURCHASING OR OTHERWISE HOLDING SUCH SECURITIES, AGREES FOR THE BENEFIT OF THE WESTAIM CORPORATION (THE "COMPANY") THAT SUCH SECURITIES MAY BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED ONLY (A) TO THE COMPANY, (B) OUTSIDE THE UNITED STATES IN ACCORDANCE WITH RULE 904 OF REGULATION S UNDER THE U.S. SECURITIES ACT AND IN COMPLIANCE WITH ALL LOCAL LAWS AND REGULATION, (C) IN ACCORDANCE WITH THE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE U.S. SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER, IF AVAILABLE, AND IN COMPLIANCE WITH APPLICABLE STATE SECURITIES LAWS, (D) IN ANOTHER TRANSACTION THAT DOES NOT REQUIRE REGISTRATION UNDER THE U.S. SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS, OR (E) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE U.S. SECURITIES ACT, AND, IN THE CASE OF (C) OR (D), THE HOLDER HAS PRIOR TO SUCH TRANSFER FURNISHED TO THE COMPANY AN OPINION OF COUNSEL IN FORM AND SUBSTANCE REASONABLY SATISFACTORY TO THE COMPANY TO SUCH EFFECT.**

## COMMON STOCK PURCHASE WARRANT

### THE WESTAIM CORPORATION

Warrant Shares: \_\_\_\_\_ Initial Issuance Date: \_\_\_\_\_, 20\_\_

THIS COMMON STOCK PURCHASE WARRANT (the “Warrant”) represents [●] common stock purchase warrants of The Westaim Corporation (the “Company”), and certifies that, for value received, \_\_\_\_\_ or its assigns (the “Holder”) is entitled, upon the terms and subject to the limitations on exercise and the conditions hereinafter set forth, at any time on or after the date hereof (the “Initial Issuance Date”) and on or prior to 5:00 p.m. (New York City time) on \_\_\_\_\_, 20\_\_ (the “Expiry Time”)¹ but not thereafter, to subscribe for and purchase from the Company, up to \_\_\_\_\_ shares of common stock of the Company (the “Common Shares”) (as subject to adjustment hereunder, the “Warrant Shares”). The purchase price of one Common Share under this Warrant shall be equal to the Exercise Price, as defined in Section 2(b).

#### Section 1. Definitions; Interpretation and Construction.

(a) Unless otherwise specified herein, all Section, clause and Schedule references used in this Warrant are to the preamble, sections, clauses and schedules to this Warrant.

(b) References to “dollars” and “C\$” are to Canadian dollars and references to “U.S. dollars” and “\$” are to United States dollars. All amounts in this Warrant may be paid in either Canadian dollars or U.S. dollars. In the event the Exercise Price and any other amounts, costs, fees and expenses incurred and/or payable by the Company or the Holder pursuant to this Warrant are denominated in Canadian dollars, the U.S. dollar equivalent for the Exercise Price and such amounts, costs, fees and expenses shall be determined by converting such other currency to U.S. dollars at the daily average rate of exchange reported by the Bank of Canada for conversion of Canadian dollars into U.S. dollars on the Business Day prior to the payment of the applicable amount.

(c) Capitalized terms used and not otherwise defined herein shall have the meanings set forth in that certain Investor Rights Agreement, dated [●] [●], 202[●], (as may be amended or restated from time to time, the “Investor Rights Agreement”), among the Company, Arena Investors Group Holdings, LLC and Wembley Group Partners, LP.

(d) Any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends.

#### Section 2. Exercise.

(a) Exercise of Warrant. Exercise of the purchase rights represented by this Warrant may be made, in whole or in part, at any time or times on or after the Initial Issuance Date

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¹ To be 5:00 p.m. New York City time on the date that is five years from the Initial Issuance Date (i.e., closing of the transaction).

and on or before the Expiry Time by delivery to the Company of a duly executed facsimile copy or PDF copy submitted by e-mail (or e-mail attachment) of the Notice of Exercise in the form of Exhibit A hereto (the “Notice of Exercise”). Within one (1) Business Day following the date of exercise as aforesaid, the Holder shall deliver the aggregate Exercise Price for the Warrant Shares specified in the applicable Notice of Exercise by wire transfer or cashier’s check drawn on a Canadian or United States bank unless the cashless exercise procedure specified in Section 2(c) below is specified in the applicable Notice of Exercise. No ink-original Notice of Exercise shall be required, nor shall any medallion guarantee (or other type of guarantee or notarization) of any Notice of Exercise be required. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company until the Holder has purchased all of the Warrant Shares available hereunder and the Warrant has been exercised in full, in which case, the Holder shall surrender this Warrant to the Company for cancellation within three (3) Business Days of the date on which the final Notice of Exercise is delivered to the Company. Partial exercises of this Warrant resulting in purchases of a portion of the total number of Warrant Shares available hereunder shall have the effect of lowering the outstanding number of Warrant Shares purchasable hereunder in an amount equal to the applicable number of Warrant Shares purchased. The Holder and the Company shall maintain records showing the number of Warrant Shares purchased and the date of such purchases. The Company shall deliver any objection to any Notice of Exercise within one (1) Business Day of receipt of such notice. **The Holder and any assignee, by acceptance of this Warrant, acknowledge and agree that, by reason of the provisions of this paragraph, following the purchase of a portion of the Warrant Shares hereunder, the number of Warrant Shares available for purchase hereunder at any given time may be less than the amount stated on the face hereof.**

(b) Exercise Price. The exercise price per Common Share under this Warrant shall be C\$[●], subject to adjustment hereunder (the “Exercise Price”).

(c) Cashless Exercise. At the time of exercise hereof, the Holder may elect to exercise this Warrant, in whole or in part, at such time by means of a “cashless exercise” in which the Holder shall be entitled to receive a number of Warrant Shares equal to the quotient obtained by dividing [(A-B) (X)] by (A), where:

i. (A) = the average VWAP for the three (3) Business Days immediately preceding the date the applicable Notice of Exercise is executed and delivered pursuant to Section 2(a) hereof;

ii. (B) = the Exercise Price of this Warrant, as adjusted hereunder; and

iii. (X) = the number of Warrant Shares that would be issuable upon such exercise of this Warrant in accordance with the terms of this Warrant if such exercise were by means of a cash exercise rather than a cashless exercise.

If Warrant Shares are issued in such a cashless exercise, the parties acknowledge and agree that in accordance with Section 3(a)(9) of the U.S. Securities Act, the Warrant Shares shall take on the registered characteristics of the Warrants being exercised. The Company agrees not to take

any position contrary to this Section 2(c), except to the extent required by applicable law, rules or regulation.

“VWAP” means, for any date, the price determined by the first of the following clauses that applies: (a) if the Common Shares are then listed or quoted on the Toronto Stock Exchange or the TSX Venture Exchange, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the Toronto Stock Exchange or TSX Venture Exchange as applicable, as reported by Bloomberg L.P. (based on a Business Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (b) if the Common Shares are then listed or quoted on the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market, the daily volume weighted average price of the Common Shares for such date (or the nearest preceding date) on the New York Stock Exchange, NYSE American LLC or the Nasdaq Stock Market as applicable, as reported by Bloomberg L.P. (based on a Business Day from 9:30 a.m. (New York City time) to 4:00 p.m. (New York City time)), (c) if the Common Shares are listed or quoted on the OTCQB or OTCQX, the volume weighted average price of the Common Shares for such date (or the nearest preceding date) on OTCQB or OTCQX as applicable, (d) if the Common Shares are not then listed or quoted for trading on OTCQB or OTCQX and if prices for the Common Shares are then reported on The Pink Open Market (or a similar organization or agency succeeding to its functions of reporting prices), the most recent bid price per Common Share so reported, or (e) in all other cases, the fair market value of a Common Share as determined by an independent appraiser selected in good faith by the Holder and reasonably acceptable to the Company, the fees and expenses of which shall be paid by the Company. In the event the VWAP or fair market value pursuant to this provision is denominated in U.S. dollars, the Canadian dollar equivalent for such VWAP or fair market value shall be determined by converting U.S. dollars to Canadian dollars at the daily average rate of exchange reported by the Bank of Canada for conversion of U.S. dollars into Canadian dollars on the Business Day prior to determination.

(d) Mechanics of Exercise.

i. Delivery of Warrant Shares Upon Exercise. The Company shall cause the Warrant Shares purchased hereunder to be transmitted by its transfer agent to the Holder (a) by crediting the account of the Holder’s or its designee’s balance account with the Depository Trust Company through its Deposit or Withdrawal at Custodian system (“DWAC”), if the Company is then a participant in such system, and either (A) there is an effective registration statement permitting the issuance of the Warrant Shares to or resale of the Warrant Shares by the Holder in the United States or (B) this Warrant is being exercised via cashless exercise and the shares are eligible for resale by the Holder in the United States without volume or manner of sale limitations or current public information requirements pursuant to Rule 144, in each case free of restrictive legends, (b) if the Company is not then a participant in the DWAC system, the Warrant Shares shall be represented by (A) one or more fully registered global certificates registered in the name of “CDS & Co.,” as the nominee of CDS Clearing and Depository Services Inc. (“CDS”) to be held by CDS as book-based securities in accordance with the rules and procedures of CDS on behalf of the securities account designated by the Holder to the Company in writing, or (B) a Direct Registration System Advice evidencing the Holder’s ownership of the Warrant Shares or (c) otherwise by physical delivery of

a certificate, registered in the Company's share register in the name of the Holder or its designee, for the number of Warrant Shares to which the Holder is entitled pursuant to such exercise to the address specified by the Holder in the Notice of Exercise by one (1) Business Day after the delivery to the Company of the Notice of Exercise (such date, the "Warrant Share Delivery Date"). Upon delivery of the Notice of Exercise, the Holder shall be deemed for all corporate purposes to have become the holder of record of the Warrant Shares with respect to which this Warrant has been exercised, irrespective of the date of delivery of the Warrant Shares; provided that payment of the aggregate Exercise Price (other than in the case of a cashless exercise) is received within one (1) Business Day following delivery of the Notice of Exercise. To the extent the Company is then a participant in the DWAC system, the Company agrees to maintain a transfer agent that is a participant in the FAST program so long as this Warrant remains outstanding and exercisable.

ii. Delivery of New Warrants Upon Exercise. If this Warrant shall have been exercised in part, the Company shall, at the request of a Holder and upon surrender of this Warrant certificate, at the time of delivery of the Warrant Shares, deliver to the Holder a new Warrant evidencing the rights of the Holder to purchase the unpurchased Warrant Shares called for by this Warrant, which new Warrant shall in all other respects be identical with this Warrant.

iii. Rescission Rights. If the Company fails to, or fails to cause its transfer agent to, transmit to the Holder the Warrant Shares pursuant to Section 2(d)(i) by the Warrant Share Delivery Date, then the Holder will have the right to rescind such exercise.

iv. Compensation for Buy-In on Failure to Timely Deliver Warrant Shares Upon Exercise. In addition to any other rights available to the Holder, if the Company fails to, or fails to cause its transfer agent to, transmit to the Holder the Warrant Shares pursuant to an exercise in accordance with the provisions of Section 2(d)(i) above on or before the Warrant Share Delivery Date, and if after such date the Holder is required by its broker to purchase (in an open market transaction or otherwise) or the Holder's brokerage firm otherwise purchases, Common Shares to deliver in satisfaction of a sale by the Holder of the Warrant Shares which the Holder anticipated receiving upon such exercise (a "Buy-In"), then the Company shall (A) pay in cash to the Holder the amount, if any, by which (x) the Holder's total purchase price (including brokerage commissions, if any) for the Common Shares so purchased exceeds (y) the amount obtained by multiplying (1) the number of Warrant Shares that the Company was required to deliver to the Holder in connection with the exercise at issue times (2) the price at which the sell order giving rise to such purchase obligation was executed, and (B) at the option of the Holder, either reinstate the portion of the Warrant and equivalent number of Warrant Shares for which such exercise was not honored (in which case such exercise shall be deemed rescinded) or deliver to the Holder the number of Common Shares that would have been issued had the Company timely complied with its exercise and delivery obligations hereunder. For example, if the Holder

purchases Common Shares having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted exercise of Common Shares with an aggregate sale price giving rise to such purchase obligation of \$10,000, under clause (A) of the immediately preceding sentence the Company shall be required to pay the Holder \$1,000. The Holder shall provide the Company written notice indicating the amounts payable to the Holder in respect of the Buy-In and, upon request of the Company, evidence of the amount of such loss. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Common Shares upon exercise of the Warrant as required pursuant to the terms hereof.

v. No Fractional Shares or Scrip. No fractional shares or scrip representing fractional shares shall be issued upon the exercise of this Warrant. As to any fraction of a share which the Holder would otherwise be entitled to purchase upon such exercise, the Company shall, at its election, either pay a cash adjustment in respect of such final fraction in an amount equal to such fraction multiplied by the Exercise Price or round up to the next whole share.

vi. Charges, Taxes and Expenses. Issuance of Warrant Shares shall be made without charge to the Holder for any issue or transfer tax or other incidental expense in respect of the issuance of such Warrant Shares, all of which taxes and expenses shall be paid by the Company, and such Warrant Shares shall be issued in the name of the Holder or in such name or names as may be directed by the Holder. The Company shall pay all transfer agent fees required for processing of any Notice of Exercise and all fees to the Depository Trust Company or CDS (or another established clearing corporation performing similar functions) required for electronic delivery of the Warrant Shares.

vii. Closing of Books. The Company will not close its shareholder books or records in any manner which prevents the timely exercise of this Warrant, pursuant to the terms hereof.

### Section 3. Certain Adjustments.

(a) Substantial Issuer Bid. Upon completion of a substantial issuer bid pursuant to Section 5.01 of the Investment Agreement dated October 9, 2024 (the "Investment Agreement"), among the Company, Wembley Group Partners, LP and, solely for purposes of specific sections enumerated therein, Arena Investors Group Holdings, LLC, Dan Zwirn and Lawrence Cutler, the number of Warrant Shares shall be reduced by a number of shares equal to the number obtained by multiplying (i) 2,997,878 by (ii) the total number of Common Shares purchased by the Company pursuant to such substantial issuer bid divided by 26,647,804 which reduction shall, for the avoidance of doubt, not exceed 2,997,878 shares. The reduction of Warrant Shares and limitation thereof pursuant to this Section 3(a) shall be appropriately adjusted for, among other things, the Reverse Stock Split (as defined in the Investment Agreement) and any other stock dividend, distribution or return, stock split, consolidation, combination, reclassification,

recapitalization, exchange, readjustment of shares or other similar event involving a change in the capital structure of the Company with respect to the Common Shares.

(b) Stock Dividends and Splits. If the Company, at any time while this Warrant is outstanding: (i) pays a stock dividend or otherwise makes a distribution or distributions on its Common Shares or any other equity or equity equivalent securities payable in Common Shares (which, for avoidance of doubt, shall not include any Common Shares issued by the Company upon exercise of this Warrant or any other warrant issued by the Company to the Holder or any of its Affiliates (or their respective designees)), (ii) subdivides outstanding Common Shares into a larger number of shares, (iii) consolidates outstanding Common Shares into a smaller number of shares (including by way of reverse stock split), or (iv) issues by reclassification of Common Shares any shares of the Company, then in each case the Exercise Price shall be multiplied by a fraction of which the numerator shall be the number of Common Shares (excluding treasury shares, if any) outstanding immediately before such event and of which the denominator shall be the number of Common Shares outstanding immediately after such event, and the number of shares issuable upon exercise of this Warrant shall be proportionately adjusted such that the aggregate Exercise Price of this Warrant shall remain unchanged. Any adjustment made pursuant to this Section 3(b) shall become effective immediately after the record date for the determination of shareholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision, combination or re-classification.

(c) Subsequent Rights Offerings. In addition to any adjustments pursuant to Section 3(b) above, if at any time the Company grants, issues or sells any Convertible Securities or rights to purchase shares, warrants, securities or other property, in each case, pro rata to the record holders of Common Shares (the "Purchase Rights"), then the Holder will be entitled to acquire, upon the terms applicable to such Purchase Rights, the aggregate Purchase Rights which the Holder could have acquired if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date on which a record is taken for the grant, issuance or sale of such Purchase Rights (or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the grant, issue or sale of such Purchase Rights).

(d) Pro Rata Distributions. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of any of its assets (or rights to acquire its assets) or distribution to holders of Common Shares, by way of return of capital or otherwise (including, without limitation, any distribution of cash, shares, evidences of its indebtedness or other securities, property or options by way of a dividend, reclassification, corporate rearrangement, plan of arrangement or scheme of arrangement or other similar transaction) (a "Distribution"), at any time after the issuance of this Warrant, then, in each such case (except in the case of a Spin-Off, which is addressed in Section 3(e) below), the Exercise Price shall be reduced, but not below the par value of the Common Stock, by the amount of such Distribution on a per share basis (or in the case of non-cash Distributions, the fair market value thereof (as reasonably determined by the Company's board of directors upon consultation with an accounting, appraisal, investment banking firm or consultant of nationally recognized standing that is not an Affiliate of the Company and is not otherwise engaged by the Company in connection with such Distribution)).

(e) Spin-Off Adjustments. During such time as this Warrant is outstanding, if the Company shall declare or make any dividend or other distribution of equity securities of any of its Subsidiaries relating to any separation from the Company of such Subsidiary by way of spin-off, spin-out or similar transaction (any such transaction, a “Spin-Off”) then, in each such case, the Holder shall be entitled to participate in and receive such securities in such Spin-Off to the same extent that the Holder would have participated therein if the Holder had held the number of Common Shares acquirable upon complete exercise of this Warrant (without regard to any limitations on exercise hereof) immediately before the date of which a record is taken for such Spin-Off (or, if no such record is taken, the date as of which the record holders of Common Shares are to be determined for the participation in such Spin-Off).

(f) Fundamental Transaction. If, at any time while this Warrant is outstanding, (i) the Company, directly or indirectly, in one or more related transactions effects any merger, amalgamation, arrangement, business combination or consolidation of the Company with or into another Person, (ii) the Company (and all of its Subsidiaries, taken as a whole), directly or indirectly, effects any sale, lease, license, assignment, transfer, conveyance or other disposition of all or substantially all of its assets in one or a series of related transactions, (iii) any, direct or indirect, purchase offer, tender offer, takeover bid or exchange offer (whether by the Company or another Person) is completed pursuant to which holders of Common Shares are permitted to sell, tender or exchange their shares for other securities, cash or property and has been accepted by the holders of 50% or more of the outstanding Common Shares, (iv) the Company, directly or indirectly, in one or more related transactions effects any reclassification, reorganization or recapitalization of the Common Shares or any compulsory share exchange pursuant to which the Common Shares are effectively converted into or exchanged for other securities, cash or property, or (v) the Company, directly or indirectly, in one or more related transactions consummates a stock or share purchase agreement or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, merger, amalgamation, plan of arrangement or scheme of arrangement) with another Person or group of Persons whereby such other Person or group acquires more than 50% of the outstanding Common Shares (not including any Common Shares held by the other Person or other Persons making or party to, or associated or affiliated with the other Persons making or party to, such stock or share purchase agreement or other business combination) (each a “Fundamental Transaction”), then:

(A) if the Fundamental Transaction is Change of Control Transaction (which includes, for the avoidance of doubt, any transaction described in clauses (i), (ii), (iii) and (v) of Section 3(f), the Holder shall receive, upon the consummation of such Fundamental Transaction, for the Warrant Shares that would have been issuable upon the exercise of this Warrant immediately prior to the occurrence of such Fundamental Transaction (assuming, for this purpose, that the Holder had exercised this Warrant in full immediately prior to such Fundamental Transaction pursuant to a cashless exercise under Section 2(c), based on the VWAP of a Warrant Share measured as of immediately prior to the occurrence of such Fundamental Transaction, and elected to participate in full in such transaction), such cash, stock, securities or other assets or property (including any contractual or other rights to receive consideration payable in the future), if any, as would have been issued or payable in such Fundamental Transaction with respect to or in exchange, as applicable, for such number of Warrant Shares (and, if the holders of Common Shares are given any choice as to the cash, stock, securities or other assets or property to be received in a Fundamental

Transaction, then the Holder shall be given the same choice as to such consideration) and, upon the Holder's receipt of all such consideration, if any, in such Fundamental Transaction (which, in respect of any contractual or other rights to receive consideration payable in the future, shall mean the receipt of such rights (rather than the receipt of such underlying consideration)), this Warrant shall immediately and automatically terminate without further action of the parties; or

(B) if the Fundamental Transaction is not a Change of Control Transaction, then, upon any subsequent exercise of this Warrant following such Fundamental Transaction, the Holder shall have the right to receive, for each Warrant Share that would have been issuable upon such exercise immediately prior to the occurrence of such Fundamental Transaction, the same kind and amount of cash, stock, securities or other assets or property, including, as applicable, the number of shares of the successor or acquiring corporation or of the Company, if it is the surviving corporation (such consideration, the "Alternate Consideration") receivable as a result of such Fundamental Transaction by a holder of the number of Common Shares for which this Warrant is exercisable immediately prior to such Fundamental Transaction (without regard to any limitations on the exercise of this Warrant). For purposes of any such exercise, the determination of the Exercise Price shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one Common Share in such Fundamental Transaction, and the Company shall apportion the Exercise Price among the Alternate Consideration in a reasonable manner reflecting the relative value of any different components of the Alternate Consideration. If holders of Common Shares are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any exercise of this Warrant following such Fundamental Transaction. If this clause (B) is applicable, the Company shall cause any successor entity in such Fundamental Transaction in which the Company is not the survivor (the "Successor Entity") to assume in writing all of the obligations of the Company under this Warrant and the other Transaction Documents in accordance with the provisions of this Section 3(f) on or prior to the occurrence of such Fundamental Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Warrant a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Warrant which is exercisable for a corresponding number of shares of capital stock of such Successor Entity (or its parent entity) equivalent to the Common Shares acquirable and receivable upon exercise of this Warrant (without regard to any limitations on the exercise of this Warrant) prior to such Fundamental Transaction, and with an exercise price which applies the Exercise Price hereunder to such shares of capital stock (but taking into account the relative value of the Common Shares pursuant to such Fundamental Transaction and the value of such shares of capital stock, such number of shares of capital stock and such exercise price being for the purpose of protecting the economic value of this Warrant immediately prior to the consummation of such Fundamental Transaction), and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any Fundamental Transaction pursuant to this clause (B), the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Transaction, the provisions of this Warrant and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and

power of the Company and shall assume all of the obligations of the Company under this Warrant and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(g) Calculations. All calculations under this Section 3 shall be made to the nearest cent or the nearest 1/100<sup>th</sup> of a share, as the case may be. For purposes of this Section 3, the number of Common Shares deemed to be issued and outstanding as of a given date shall be the sum of the number of Common Shares (excluding treasury shares, if any) issued and outstanding.

(h) Notice to Holder.

i. Adjustment to Exercise Price. Whenever the Exercise Price is adjusted pursuant to any provision of this Section 3, the Company shall promptly deliver to the Holder by facsimile or email a notice setting forth the Exercise Price after such adjustment and any resulting adjustment to the number of Warrant Shares and setting forth a brief statement of the facts requiring such adjustment.

ii. Notice to Allow Exercise by Holder. If (A) the Company shall declare a dividend (or any other distribution in whatever form) on the Common Shares, (B) the Company shall declare a special nonrecurring cash dividend on or a redemption of the Common Shares, (C) the Company shall authorize the granting to all holders of the Common Shares rights or warrants to subscribe for or purchase any shares of capital stock of any class or of any rights, (D) the approval of any shareholders of the Company shall be required in connection with any reclassification of the Common Shares, any consolidation, amalgamation or merger to which the Company (and all of its Subsidiaries, taken as a whole) is a party, any sale or transfer of all or substantially all of the assets of the Company, or any compulsory share exchange whereby the Common Shares are converted into other securities, cash or property (other than for the sole purpose of changing the Company's name and/or jurisdiction of incorporation of the Company), or (E) the Company shall authorize the voluntary or involuntary dissolution, liquidation or winding up of the affairs of the Company, then, in each case, the Company shall cause to be delivered by facsimile or email to the Holder at its last facsimile number or email address as it shall appear upon the Warrant Register of the Company, at least Twenty (20) calendar days prior to the applicable record or effective date hereinafter specified (whichever is earlier), a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution, redemption, rights or warrants, or if a record is not to be taken, the date as of which the holders of the Common Shares of record to be entitled to such dividend, distributions, redemption, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, amalgamation, sale, transfer or share exchange is expected to become effective or close, and the date as of which it is expected that holders of the Common Shares of record shall be entitled to exchange their Common Shares for securities, cash or other property deliverable upon such reclassification, consolidation, merger, amalgamation, sale, transfer or share exchange; provided that the failure to deliver such notice or any defect therein or in the delivery thereof shall not affect the validity of the corporate action required

to be specified in such notice. To the extent that any notice provided in this Warrant constitutes, or contains, material, non-public information regarding the Company or any of the Subsidiaries, the Company shall simultaneously issue a press release announcing such material, non-public information and file such release with, as applicable, the Canadian Securities Commissions and/or with the SEC pursuant to a Current Report on Form 6-K or Form 8-K. The Holder shall remain entitled to exercise this Warrant during the period commencing on the date of such notice to the effective date of the event triggering such notice except as may otherwise be expressly set forth herein.

Section 4. Transfer of Warrant.

(a) Transferability. This Warrant and all rights hereunder (including, without limitation, any registration rights) are transferable, in whole or in part, upon surrender of this Warrant at the principal office of the Company or its designated agent, together with a written assignment of this Warrant substantially in the form of Exhibit B hereto duly executed by the Holder or its agent or attorney and funds sufficient to pay any transfer taxes payable upon the making of such transfer. Upon such surrender and, if required, such payment, the Company shall execute and deliver a new Warrant or Warrants in the name of the assignee or assignees, as applicable, and in the denomination or denominations specified in such instrument of assignment, and shall issue to the assignor a new Warrant evidencing the portion of this Warrant not so assigned, and this Warrant shall promptly be canceled. Notwithstanding anything herein to the contrary, the Holder shall not be required to physically surrender this Warrant to the Company unless the Holder has assigned this Warrant in full, in which case, the Holder shall surrender this Warrant to the Company within three (3) Business Days of the date on which the Holder delivers an assignment form to the Company assigning this Warrant in full. The Warrant, if properly assigned in accordance herewith, may be exercised by a new holder for the purchase of Warrant Shares without having a new Warrant issued.

(b) New Warrants. This Warrant may be divided or combined with other Warrants upon presentation hereof at the aforesaid office of the Company, together with a written notice specifying the names and denominations in which new Warrants are to be issued, signed by the Holder or its agent or attorney. Subject to compliance with Section 4(a), as to any transfer which may be involved in such division or combination, the Company shall execute and deliver a new Warrant or Warrants in exchange for the Warrant or Warrants to be divided or combined in accordance with such notice. All Warrants issued on transfers or exchanges shall be dated the initial issuance date of this Warrant and shall be identical with this Warrant except as to the number of Warrant Shares issuable pursuant thereto.

(c) Warrant Register. The Company shall register this Warrant, upon records to be maintained by the Company for that purpose (the "Warrant Register"), in the name of the record Holder hereof from time to time. The Company may deem and treat the registered Holder of this Warrant as the absolute owner hereof for the purpose of any exercise hereof or any distribution to the Holder, and for all other purposes, absent actual notice to the contrary.

(d) Transfer Restrictions. If, at the time of the surrender of this Warrant in connection with any transfer of this Warrant, the transfer of this Warrant shall not be either (i)

registered pursuant to an effective registration statement under the U.S. Securities Act and under applicable state securities or blue sky laws or (ii) eligible for resale without volume or manner of sale limitations or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee of this Warrant, as the case may be, comply with the transfer provisions of the Investor Rights Agreement.

Section 5. Miscellaneous.

(a) No Rights as Shareholder Until Exercise; No Settlement in Cash. This Warrant does not entitle the Holder to any voting rights, dividends or other rights as a shareholder of the Company prior to the exercise hereof as set forth in Section 2(d)(i), except as expressly set forth in Section 3. Without limiting any rights of a Holder to receive Warrant Shares on a “cashless exercise” pursuant to Section 2(c) or to receive cash payments pursuant to Section 2(d)(i) and Section 2(d)(iv) herein, in no event shall the Company be required to net cash settle an exercise of this Warrant.

(b) Loss, Theft, Destruction or Mutilation of Warrant. The Company covenants that upon receipt by the Company of evidence reasonably satisfactory to it of the loss, theft, destruction or mutilation of this Warrant or any share certificate relating to the Warrant Shares, and in case of loss, theft or destruction, of indemnity or security reasonably satisfactory to it (which, in the case of the Warrant, shall not include the posting of any bond), and upon surrender and cancellation of such Warrant or share certificate, if mutilated, the Company will make and deliver a new Warrant or share certificate of like tenor and dated as of such cancellation, in lieu of such Warrant or share certificate.

(c) Saturdays, Sundays, Holidays, etc. If the last or appointed day for the taking of any action or the expiration of any right required or granted herein shall not be a Business Day, then such action may be taken or such right may be exercised on the next succeeding Business Day.

(d) Authorized Shares.

The Company covenants that, during the period the Warrant is outstanding, it will reserve from its authorized and unissued Common Shares a sufficient number of shares to provide for the issuance of the Warrant Shares upon the exercise of any purchase rights under this Warrant. The Company further covenants that its issuance of this Warrant shall constitute full authority to its officers who are charged with the duty of issuing the necessary Warrant Shares upon the exercise of the purchase rights under this Warrant. The Company will take all such action as may be necessary to assure that such Warrant Shares may be issued as provided herein without violation of any applicable law or regulation, or of any requirements of each securities exchange upon which the Common Shares may be listed. The Company covenants that all Warrant Shares which may be issued upon the exercise of the purchase rights represented by this Warrant will, upon exercise of the purchase rights represented by this Warrant and payment for such Warrant Shares in accordance herewith, be duly authorized, validly issued, fully paid and nonassessable and free from all taxes, liens and charges created by the Company in respect of the issue thereof (other than taxes in respect of any transfer occurring contemporaneously with such issue) and approved for

listing on each securities exchange or automated quotation system on which similar securities are then listed.

Except and to the extent as waived or consented to by the Holder, the Company shall not by any action, including, without limitation, amending its certificate of incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms of this Warrant. Without limiting the generality of the foregoing, the Company will (i) not increase the par value of any Warrant Shares above the amount payable therefor upon such exercise immediately prior to such increase in par value, (ii) take all such action as may be necessary or appropriate in order that the Company may validly and legally issue fully paid and nonassessable Warrant Shares upon the exercise of this Warrant and (iii) use reasonable best efforts to obtain all such authorizations, exemptions or consents from any securities regulatory authority and securities exchange having jurisdiction thereof, as may be, necessary to enable the Company to perform its obligations under this Warrant.

Before taking any action which would result in an adjustment in the number of Warrant Shares for which this Warrant is exercisable or in the Exercise Price, the Company shall obtain all such authorizations or exemptions thereof, or consents thereto, as may be necessary from any securities regulatory authorities and securities exchanges having jurisdiction thereof.

(e) Governing Law and Submission to Jurisdiction. This Warrant, the respective rights and obligations of the parties and any claim, controversy or dispute arising under or related to this Warrant shall be governed by, interpreted and enforced in accordance with the Laws of the State of Delaware, without regard to its conflict of laws rules. Each of the parties to this Warrant, by its execution hereof, irrevocably and unconditionally (i) submits to the exclusive jurisdiction of the state and federal courts of the State of Delaware for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Warrant or relating to the subject matter hereof, (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its Subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Warrant or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees not to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Warrant or relating to the subject matter hereof or thereof other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by Delaware law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 6.1 of the Investor Rights Agreement is reasonably calculated to give actual notice. Notwithstanding the foregoing in this Section 5(e), a party may commence any action in a court other than the above-named courts solely for the purpose of enforcing an order or judgment issued by one of the above-named courts.

(f) Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS WARRANT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 5(f) CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS WARRANT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 5(f) WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

(g) Restrictions. The Holder acknowledges that the Warrant Shares acquired upon the exercise of this Warrant, if not registered under the U.S. Securities Act, and the Holder does not utilize cashless exercise pursuant to Section 2(c) hereof, may have restrictions upon resale imposed by United States federal and state securities laws.

(h) Nonwaiver and Expenses. No course of dealing or any delay or failure to exercise any right hereunder on the part of Holder shall operate as a waiver of such right or otherwise prejudice the Holder's rights, powers or remedies. Without limiting any other provision of this Warrant or the Investor Rights Agreement, if the Company willfully and knowingly fails to comply with any provision of this Warrant, which results in any material damages to the Holder, the Company shall pay to the Holder such amounts as shall be sufficient to cover any costs and expenses including, but not limited to, reasonable attorneys' fees, including those of appellate proceedings, incurred by the Holder in collecting any amounts due pursuant hereto or in otherwise enforcing any of its rights, powers or remedies hereunder.

(i) Notices. Any notice, request or other document required or permitted to be given or delivered to the Holder by the Company shall be delivered in accordance with the notice provisions of the Investor Rights Agreement.

(j) Limitation of Liability. No provision hereof, in the absence of any affirmative action by the Holder to exercise this Warrant to purchase Warrant Shares, and no enumeration herein of the rights or privileges of the Holder, shall give rise to any liability of the Holder for the purchase price of any Common Shares or as a shareholder of the Company, whether such liability is asserted by the Company or by creditors of the Company.

(k) Remedies. The Holder, in addition to being entitled to exercise all rights granted by law, including recovery of damages, will be entitled to specific performance of its rights under this Warrant. The Company agrees that monetary damages would not be adequate compensation for any loss incurred by reason of a breach by it of the provisions of this Warrant

and hereby agrees to waive and not to assert the defense in any action for specific performance that a remedy at law would be adequate.

(l) Successors and Assigns. Subject to applicable securities laws, this Warrant and the rights and obligations evidenced hereby shall inure to the benefit of and be binding upon the successors and permitted assigns of the Company and the successors and permitted assigns of Holder. The provisions of this Warrant are intended to be for the benefit of any Holder from time to time of this Warrant and shall be enforceable by the Holder or holder of Warrant Shares.

(m) Amendment. Subject to obtaining any prior approval of the TSX Venture Exchange and/or such other stock exchange on which the Common Shares are listed for trading at such time required under the policies of such exchange, this Warrant may be modified or amended or the provisions hereof waived with the written consent of the Company and the Holder.

(n) Severability. Wherever possible, each provision of this Warrant shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Warrant shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or the remaining provisions of this Warrant.

(o) Headings. The headings used in this Warrant are for the convenience of reference only and shall not, for any purpose, be deemed a part of this Warrant.

*(Signature Page Follows)*

IN WITNESS WHEREOF, the Company has caused this Warrant to be executed by its officer thereunto duly authorized as of the date first above indicated.

**THE WESTAIM CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**NOTICE OF EXERCISE**

TO: THE WESTAIM CORPORATION

(1) The undersigned hereby elects to purchase \_\_\_\_\_ Warrant Shares of the Company pursuant to the terms of the attached Warrant (only if exercised in full), and tenders herewith payment of the exercise price in full, together with all applicable transfer taxes, if any.

(2) Payment shall take the form of (check applicable box):

in lawful money of Canada;

in lawful money of the United States; or

if permitted, the cancellation of such number of Warrant Shares as is necessary, in accordance with the formula set forth in subsection 2(c), to exercise this Warrant with respect to the maximum number of Warrant Shares purchasable pursuant to the cashless exercise procedure set forth in subsection 2(c).

(3) Please issue said Warrant Shares in the name of the undersigned or in such other name as is specified below:

\_\_\_\_\_

The Warrant Shares shall be delivered to the following DWAC Account Number:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_ ]

OR

The Warrant Shares shall be delivered in accordance with the following CDS electronic delivery instructions:

Registration: CDS & Co., 85 Richmond Street West, Toronto, ON, M5H 2C9

CDS Participant: \_\_\_\_\_

CUID Number: \_\_\_\_\_

Deposit ID: \_\_\_\_\_

Contact Name, Phone & Email: \_\_\_\_\_

79117417.10

***NOTE TO BROKER: DEPOSIT SHOULD BE KEYED INTO CDS AS AN INSTANT DEPOSIT***

[SIGNATURE OF HOLDER]

Name of Investing Entity: \_\_\_\_\_

*Signature of Authorized Signatory of Investing Entity:* \_\_\_\_\_

Name of Authorized Signatory: \_\_\_\_\_

Title of Authorized Signatory: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT B**

**ASSIGNMENT FORM**

*(To assign the foregoing Warrant, execute this form and supply required information. Do not use this form to purchase shares.)*

FOR VALUE RECEIVED, the foregoing Warrant and all rights evidenced thereby are hereby assigned to

Name: \_\_\_\_\_  
(Please Print)

Address: \_\_\_\_\_  
(Please Print)

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_

Holder's Signature: \_\_\_\_\_

Holder's Address: \_\_\_\_\_

ANNEX III

AMENDED AND RESTATED PLAN OF ARRANGEMENT

**Plan of Arrangement under Section 193 of the  
Business Corporations Act (Alberta)**

**ARTICLE 1  
INTERPRETATION**

**Section 1.1 Definitions**

Unless indicated otherwise, where used in this Plan of Arrangement, capitalized terms used but not defined shall have the meanings specified in the Investment Agreement and the following terms shall have the following meanings (and grammatical variations of such terms shall have corresponding meanings):

**“ABCA”** means the *Business Corporations Act* (Alberta);

**“Arrangement Approval Resolution”** means the special resolution of the Company Shareholders that is to be considered at the Company Meeting with respect to the approval of this Plan of Arrangement, substantially in the form set out in Exhibit F to the Investment Agreement;

**“Arrangement”, “herein”, “hereof”, “hereto”, “hereunder”** and similar expressions refer to the arrangement under section 193 of the ABCA on the terms and subject to the conditions set out in this Plan of Arrangement, subject to any amendments or variations to this Plan of Arrangement made in accordance with the terms of (a) this Plan of Arrangement or (b) made at the direction of the Court in the Final Order with the prior written consent of the Consenting Parties;

**“Articles of Arrangement”** means the articles of arrangement of the Company in respect of the Arrangement, required by the ABCA to be sent to the Registrar after the Final Order is made, which shall include this Plan of Arrangement and otherwise be in a form satisfactory to the Consenting Parties;

**“business day”** means any day except a Saturday, a Sunday or other day on which the SEC or banks in the City of New York or the City of Calgary, Alberta are authorized or required by Law to be closed;

**“Certificate of Arrangement”** means the certificate of arrangement to be issued by the Registrar pursuant to subsection 193(11) of the ABCA in respect of the Articles of Arrangement;

**“Code”** means the United States Internal Revenue Code of 1986, as amended;

**“Consenting Parties”** means (a) if the Investment Agreement has not been terminated in accordance with its terms, the Company or Westaim Delaware, as applicable, and the Investor, each acting reasonably, or (b) if the Investment Agreement has been terminated in accordance with its terms, the Company or Westaim Delaware, as applicable;

**“Company”** means The Westaim Corporation, a corporation existing under the laws of the Province of Alberta;

**“Company Common Shares”** means the common shares in the capital of the Company;

**“Company LTIP”** means the Company’s Amended and Restated Long-Term Incentive Plan;

**“Company Meeting”** means the special meeting of Company Shareholders, including any adjournment or postponement thereof, to be called and held in accordance with applicable Law and the Interim Order to consider the Arrangement Approval Resolution;

**“Company RSU”** means a restricted share unit issued by the Company pursuant to the Company LTIP;

**“Company RSU Holder”** means a holder of one or more Company RSUs;

**“Company Share Value”** means the five-day volume-weighted average trading price of the Company Common Shares on the TSXV, determined as of the close of business on the second (2<sup>nd</sup>) business day immediately preceding the Effective Date;

**“Company Shareholders”** means the holders of Company Common Shares;

**“Court”** means the Court of King’s Bench of Alberta;

**“DGCL”** means the General Corporation Law of Delaware, as amended from time to time;

**“Dissent Rights”** has the meaning given to it in Section 3.1;

**“Dissenting Shareholder”** means a registered Company Shareholder who has validly exercised his, her or its Dissent Rights in accordance with the ABCA and the terms of the Interim Order and has not withdrawn or been deemed to have withdrawn such exercise of Dissent Rights prior to the Effective Time, but only in respect of the Company Common Shares in respect of which Dissent Rights are validly exercised by such registered Company Shareholder in accordance with the ABCA and the terms of the Interim Order;

**“DRS Statement”** means a direct registration system statement;

**“Effective Date”** means the date shown on the Certificate of Arrangement giving effect to the Arrangement;

**“Effective Time”** means 11:59 p.m. on the Effective Date, or such other time as the Consenting Parties agree to in writing before the Effective Date;

**“Final Order”** means the final order of the Court in a form acceptable to the Consenting Parties approving the Arrangement, as such order may be amended by the Court (with the consent of the Consenting Parties) at any time prior to the Effective Date or, if appealed, then, unless such appeal is withdrawn or denied, as affirmed or as amended (provided that any such amendment is acceptable to the Consenting Parties) on appeal;

**“Interim Order”** means the interim order of the Court in a form acceptable to the Consenting Parties providing for, among other things, the calling and holding of the Company Meeting, as such order may be amended, modified or varied by the Court with the consent of the Consenting Parties;

**“Investment Agreement”** means the investment agreement dated October 9, 2024, by and among (a) the Investor, (b) the Company, (c) solely for purposes of Sections 2.04(c), 4.03, 4.05, 6.01, 6.11 and 6.17 thereof, Arena Investors Group Holdings, LLC and (d) solely for purposes of Sections 2.04(d) and 4.03 thereof, Daniel Zwirn and Lawrence Cutler, as amended on November [●], 2024 and as the same may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof;

**“Investor”** means Wembley Group Partners, LP;

**“Letter of Transmittal”** means the letter of transmittal accompanying the Company Circular, pursuant to which registered Company Shareholders who hold a share certificate(s) are required to deliver their certificate(s) representing Common Shares in order to receive a certificate(s) or DRS Statement(s) representing the Westaim Delaware Shares issuable to them, or the cash payable to them if they will hold less than one whole Westaim Delaware Share after completion of the Reverse Stock Split, pursuant to the Arrangement;

**“person”** means any natural person, corporation, limited liability company, partnership, limited partnership, joint venture, trust, business association, Governmental Entity or other entity;

**“Plan of Arrangement”** means this plan of arrangement, subject to any amendments or variations to such plan made in accordance with (a) the Investment Agreement, if applicable, and Section 5.1 hereof or (b) made at the direction of the Court in the Final Order with the prior written consent of the Consenting Parties;

**“Redomiciliation”** means, pursuant to the Arrangement, the discontinuance of the Company from the jurisdiction of the ABCA and the concurrent redomiciliation of the Company in the State of Delaware pursuant to the provisions of Section 388 of the DGCL;

**“Registrar”** means the Registrar of Corporations or a Deputy Registrar of Corporations appointed under section 263 of the ABCA;

**“Reverse Stock Split”** has the meaning given to it in Section 2.2(c);

**“Transfer Agent”** means the Company’s transfer agent, being Computershare Trust Company of Canada, and where applicable to certain steps of the Arrangement Computershare Investor Services Inc., or any successor thereto;

**“U.S. Securities Act”** means the *United States Securities Act of 1933*, as amended, and the rules promulgated by the SEC thereunder;

**“Westaim Delaware”** means the Company upon and following the Redomiciliation; and

**“Westaim Delaware Shares”** means the shares of common stock of Westaim Delaware, to be issued in exchange for Company Common Shares pursuant to the Arrangement.

## **Section 1.2 Certain Rules of Interpretation**

In this Plan of Arrangement, unless otherwise specified:

- (a) **Headings, etc.** The division of this Plan of Arrangement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Plan of Arrangement. Unless reference is specifically made to some other document or instrument, all references herein to articles and sections are to articles and sections of this Plan of Arrangement.
- (b) **Currency.** All references to dollars or to \$ are references to Canadian dollars, unless specified otherwise.

- (c) **Gender and Number.** Unless the context otherwise requires, words importing the singular number shall include the plural and vice versa; and words importing any gender shall include all genders.
- (d) **Certain Phrases, etc.** The words (i) “including”, “includes” and “include” mean “including (or includes or include) without limitation”, (ii) “the aggregate of”, “the total of”, “the sum of”, or a phrase of similar meaning means “the aggregate (or total or sum), without duplication, of”, and (iii) unless stated otherwise, “Article”, “Section”, and “Exhibit” followed by a number or letter mean and refer to the specified Article or Section of or Exhibit to this Plan of Arrangement.
- (e) **Statutes.** Any reference to a statute refers to such statute and all rules, resolutions and regulations made under it, as it or they may have been or may from time to time be amended or re-enacted, unless stated otherwise.
- (f) **Computation of Time.** A period of time is to be computed as beginning on the day following the event that began the period and ending at 4:30 p.m. on the last day of the period, if the last day of the period is a business day, or at 4:30 p.m. on the next business day if the last day of the period is not a business day. If the date on which any action is required or permitted to be taken under this Plan of Arrangement by a person is not a business day, such action shall be required or permitted to be taken on the next succeeding day which is a business day.
- (g) **Time References.** References to time herein are to local time, Calgary, Alberta.

## ARTICLE 2 THE ARRANGEMENT

### Section 2.1 Binding Effect

This Plan of Arrangement and the Arrangement, upon the filing of the Articles of Arrangement with the Registrar and the issuance of the Certificate of Arrangement, will become effective, and be binding on the Company, all holders and beneficial owners of Company Common Shares (including Dissenting Shareholders) or any other securities of the Company, the registrar and transfer agent of the Company, and all other persons, at and after, the Effective Time without any further act or formality required on the part of any person.

### Section 2.2 Arrangement

Commencing at the Effective Time, each of the following events and transactions shall occur and shall be deemed to occur sequentially in the order set out below, without any further authorization, act or formality on the part of any person unless stated otherwise:

- (a) the Company Common Shares held by Dissenting Shareholders shall be deemed to have been transferred to the Company (free and clear of any and all Liens) and shall be immediately cancelled and cease to be outstanding, and such Dissenting Shareholders shall cease to have any rights as Company Shareholders other than the right to be paid by the Company the fair value of their Company Common Shares in accordance with Article 3;
- (b) notwithstanding the terms of the Company LTIP and any notice, instrument or agreement evidencing the grant of such Company RSU:

- (i) each Company RSU outstanding immediately prior to the Effective Time that has not yet vested in accordance with its terms shall be accelerated so that such Company RSU is fully vested;
  - (ii) each Company RSU outstanding immediately prior to the Effective Time shall, without any further action by or on behalf of the Company RSU Holder, be deemed to be surrendered and transferred by such Company RSU Holder, free and clear of any and all Liens, to the Company in exchange for a cash payment for such Company RSU equal to the Company Share Value, less applicable tax withholdings, and (A) each such Company RSU shall immediately be cancelled and such Company RSU Holder shall cease to be the holder thereof and to have any rights as the holder of such Company RSU, other than the right to receive the consideration (if any) to which such Company RSU Holder is entitled pursuant to this Section 2.2(b), (B) such Company RSU Holder's name shall be removed from the register of Company RSUs maintained by or on behalf of the Company as the holder of such Company RSU, and (C) all notices, instruments and agreements evidencing the grant of such Company RSU shall be terminated and shall be of no further force and effect;
- (c) the number of issued and outstanding Company Common Shares will be changed by way of a reverse split (the "**Reverse Stock Split**") of the issued and outstanding Company Common Shares on the basis of one (1) post-Reverse Stock Split Company Common Share for every six (6) outstanding pre-Reverse Stock Split Company Common Shares, provided that:
- (i) in the event that the change in the number of the issued and outstanding Company Common Shares would result in any Company Shareholder of record holding fewer than one (1) whole Company Common Share after giving effect to the Reverse Stock Split, such Company Shareholder of record shall receive a cash payment of \$4.75 for each pre-Reverse Stock Split Company Common Share held by such Company Shareholder in lieu of any post-Reverse Stock Split Company Common Shares, up to a maximum cash payment of \$23.75 per Company Shareholder; and
  - (ii) in the event that any Company Shareholder holds greater than one (1) whole Company Common Share after giving effect to the Reverse Stock Split, any fractional Company Common Shares held by such Company Shareholder after giving effect to the Reverse Stock Split will, (A) if equal to or greater than one-half of one whole post-Reverse Stock Split Company Common Share, be rounded up to the nearest whole Company Common Share; and (B) if less than one-half of one whole post-Reverse Stock Split Company Common Share, be rounded down to the nearest whole Company Common Share; and
- (d) the Redomiciliation shall be effective and Company shall continue under the DGCL in accordance with the following:
- (i) the name of Westaim Delaware shall be "The Westaim Corporation";
  - (ii) there shall be filed with the Secretary of State of the State of Delaware a certificate of domestication and a certificate of incorporation of Westaim Delaware in the form set forth in Exhibit A to this Plan of Arrangement;

- (iii) the by-laws of Westaim Delaware shall be in the form set forth in Exhibit B to this Plan of Arrangement;
- (iv) the authorized capital of Westaim Delaware shall consist of 160,000,000 Westaim Delaware Shares and 100,000,000 shares of preferred stock, par value \$0.001 per share, as set forth in the certificate of incorporation of Westaim Delaware referred to in clause (ii) above;
- (v) each issued and outstanding Company Common Share (for greater certainty, other than those Company Common Shares (if any) previously transferred to the Company by Dissenting Shareholders pursuant to Section 2.2(a) and immediately cancelled by the Company) shall be exchanged for one (1) fully paid and non-assessable Westaim Delaware Share;
- (vi) the property of the Company shall continue to be the property of Westaim Delaware;
- (vii) Westaim Delaware shall continue to be liable for the obligations of the Company;
- (viii) any existing cause of action, claim or liability to prosecution in respect of the Company shall be unaffected;
- (ix) any civil, criminal or administrative action or proceeding pending by or against the Company may be continued to be prosecuted by or against Westaim Delaware; and
- (x) any conviction against, or ruling, order or judgement in favour of or against the Company may be enforced by or against Westaim Delaware.

### **Section 2.3 Updates to Securities Registers**

The Company and Westaim Delaware shall make the appropriate entries in their securities registers to reflect the matters referred to under Section 2.2.

### **Section 2.4 Withholding Rights**

The Company will be entitled to deduct and withhold from any consideration or other amount otherwise payable to any Company RSU Holder or any other person under this Plan of Arrangement (including any payment to Dissenting Shareholders) such amounts as the Company may reasonably determine are required to be deducted or withheld with respect to such payment under the ITA, the Code, and the rules and regulations promulgated thereunder, any applicable provincial tax legislation and any other provision of Laws in respect of taxes, as amended. For the purposes hereof, all such deducted or withheld amounts shall be treated as having been paid to the person in respect of which such deduction or withholding was made on account of the obligation to make payment to such person hereunder, provided that such deducted or withheld amounts are timely remitted to the appropriate Governmental Entity by or on behalf of the Company.

### **Section 2.5 Tax Treatment of Redomiciliation**

The Company intends that, for United States federal income tax purposes, the Redomiciliation will qualify as a "reorganization" within the meaning of Section 368(a) of the Code and the Treasury Regulations thereunder, to which each of Westaim Delaware and the Company are to be parties under

Section 368(b) of the Code and the Treasury Regulations thereunder. This Plan of Arrangement is intended to be, and is adopted as, a plan of reorganization for purposes of Sections 354, 361 and the 368 of the Code and within the meaning of Treasury Regulations Section 1.368-2(g). The Company does not know of any fact or circumstance, nor has taken or will take any action, if such fact, circumstance or action would be reasonably expected to cause the Redomiciliation to fail to qualify as a reorganization within the meaning of Section 368(a) of the Code and the Treasury Regulations thereunder. The Redomiciliation shall be reported by the Company for all United States (including applicable state and local) Tax purposes in accordance with the foregoing, unless otherwise required by a Governmental Entity as a result of a "determination" within the meaning of Section 1313(a) of the Code.

### **ARTICLE 3 DISSENTING SHAREHOLDERS**

#### **Section 3.1 Rights of Dissent**

- (a) Registered holders of Company Common Shares may exercise, pursuant to and in the manner set forth in Section 191 of the ABCA, the right of dissent in connection with the Arrangement, as same may be modified by the Interim Order and this Section 3.1 ("**Dissent Rights**"); provided that notwithstanding subsection 191(5) of the ABCA, the written notice setting forth such registered holder's objection to the Arrangement Approval Resolution referred to in subsection 191(5) of the ABCA must be received by the Company not later than 5:00 p.m. Calgary time on the business day which is two (2) business days immediately preceding the date of the Company Meeting (as it may be adjourned or postponed from time to time). Dissenting Shareholders who duly exercise their Dissent Rights shall be deemed to have transferred the Company Common Shares held by them and in respect of which Dissent Rights have been validly exercised to the Company free and clear of all Liens, as provided in Section 2.2(a) and if they:
- (i) are ultimately entitled to be paid fair value for such Company Common Shares: (A) shall be deemed not to have participated in the transactions in Article 2 (other than Section 2.2(a)); (B) will be entitled to be paid the fair value of such Company Common Shares, which fair value, notwithstanding anything to the contrary contained in subsection 191(3) of the ABCA, shall be determined as of the close of business on the day before the Arrangement Approval Resolution was adopted; and (C) will not be entitled to any other payment or consideration, including any payment that would be payable under the Arrangement had such holders not exercised their Dissent Rights in respect of such Company Common Shares; or
  - (ii) ultimately are not, for any reason, entitled to be paid fair value for such Company Common Shares shall be deemed to have participated in the Arrangement on the same basis as a non-dissenting Company Shareholder.
- (b) In no circumstances shall the Company, Westaim Delaware, the Investor or any other person be required to recognize a person exercising Dissent Rights unless (i) such person is the registered holder of those Company Common Shares in respect of which such rights are sought to be exercised, and (ii) such person has strictly complied with the procedures for exercising Dissent Rights described in Section 3.1 and the ABCA and does not withdraw such dissent prior to the Effective Time.

- (c) For greater certainty, in no case shall the Company, Westaim Delaware, the Investor or any other person be required to recognize a Dissenting Shareholder as a holder of Company Common Shares after the Effective Time and the names of such Dissenting Shareholders shall be removed from the registers of holders of Company Common Shares and such Company Common Shares shall be immediately cancelled and cease to be outstanding. In addition to any other restrictions under the ABCA, Company Shareholders who vote or have instructed a proxyholder to vote such Company Common Shares in favour of the Arrangement Approval Resolution shall not be entitled to exercise Dissent Rights (in respect of such Company Common Shares).

## **ARTICLE 4 OUTSTANDING CERTIFICATES**

### **Section 4.1 Outstanding Certificates**

- (a) From and after the Effective Time, certificates formerly representing Company Common Shares that were exchanged pursuant to Section 2.2 shall represent only the right to receive either (i) the cash payment to which the holders thereof are entitled pursuant to Section 2.2(c)(i), (ii) the Westaim Delaware Shares to which the holders thereof are entitled under Section 2.2(d), or (iii) as to those certificates formerly representing Company Common Shares held by Dissenting Shareholders (other than those Dissenting Shareholders deemed to have participated in the Arrangement pursuant to Section 3.1), to receive the fair value of the Company Common Shares formerly represented by such certificates.
- (b) Westaim Delaware shall, as soon as practicable and in any event within five business days following the later of the Effective Date and the date of deposit by a former holder of Company Common Shares of a duly executed and completed Letter of Transmittal and the certificates formerly representing such Company Common Shares, either:
- (i) forward or cause to be forwarded by first class mail (postage prepaid) to such former holder at the address specified in the Letter of Transmittal; or
  - (ii) if requested by such former holder in the Letter of Transmittal, make available or cause to be made available at the Transfer Agent for pickup by such former holder;
- either (i) the cash payment to which the holder thereof is entitled pursuant to Section 2.2(c)(i) or (ii) certificate(s) or DRS Statement(s) representing the number of Westaim Delaware Shares to be received by such former holder of Company Common Shares under Section 2.2(d).
- (c) In the event any certificate which immediately prior to the Effective Time represented one or more outstanding Company Common Shares that were exchanged pursuant to Section 2.2 shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such certificate to be lost, stolen or destroyed, the Transfer Agent will issue in exchange for such lost, stolen or destroyed certificate and such Company Shareholder's Letter of Transmittal either the cash payment or the certificate(s) or DRS Statement(s) representing the Westaim Delaware Shares that such Company Shareholder has the right to receive in accordance with Section 4.1(b). When authorizing such issuance in exchange for any lost, stolen or destroyed certificate, the person to whom such payment, certificate(s) or DRS Statement(s) are to be delivered shall as a condition precedent to the delivery of such payment,

certificate(s) or DRS Statement(s), give a bond satisfactory to the Consenting Parties and the Transfer Agent (each acting reasonably) or otherwise indemnify Westaim Delaware and the Transfer Agent in a manner satisfactory to the Consenting Parties and the Transfer Agent (each acting reasonably) against any claim that may be made against Westaim Delaware or the Transfer Agent with respect to the certificate alleged to have been lost, stolen or destroyed.

#### **Section 4.2 Limitation and Proscription**

- (a) To the extent a holder of certificates formerly representing Company Common Shares that were exchanged pursuant to Section 2.2 shall have not complied with the provisions of Section 4.1 on or before the date that is six years after the Effective Date (the “**Final Proscription Date**”), then:
- (i) any cash payment to which the holder of such certificate was entitled pursuant to Section 2.2(c)(i) shall cease to represent a right or claim of any kind or nature and the right of the holder to receive any applicable cash payment pursuant to Section 2.2(c)(i) shall terminate and be deemed to be surrendered and forfeited to the Company for no consideration;
  - (ii) the certificates formerly representing Company Common Shares shall cease to represent a right or claim of any kind or nature as of such Final Proscription Date, and
  - (iii) any payment made by way of cheque by the Transfer Agent pursuant to Section 2.2(c)(i) that has not been deposited or has been returned to the Transfer Agent or that otherwise remains unclaimed, in each case, on or before the Final Proscription Date shall cease to represent a right or claim of any kind or nature.

### **ARTICLE 5 AMENDMENTS**

#### **Section 5.1 Amendments to Plan of Arrangement**

- (a) Subject to the terms of the Investment Agreement, if applicable, the Consenting Parties may amend, modify and/or supplement this Plan of Arrangement at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (i) set out in writing, (ii) approved by the Consenting Parties, (iii) filed with the Court and, if made following the Company Meeting, approved by the Court, and (iv) communicated to Company Shareholders if and as required by the Court. Notwithstanding the preceding sentence and for greater certainty, in the event that the Investment Agreement is terminated in accordance with its terms prior to the Effective Date, the Company may unilaterally amend, modify and/or supplement this Plan of Arrangement (including, for greater certainty, to remove references to the Investment Agreement and the Investor from this Plan of Arrangement) at any time and from time to time prior to the Effective Time, provided that each such amendment, modification and/or supplement must be (x) set out in writing, (y) filed with the Court and, if made following the Company Meeting, approved by the Court and (z) communicated to Company Shareholders if and as required by the Court.

- (b) Any amendment, modification or supplement to this Plan of Arrangement may be proposed by a Consenting Party at any time prior to the Company Meeting (provided that the Consenting Parties shall have consented thereto in accordance with Section 5.1(a)) with or without any other prior notice or communication, and if so proposed and accepted by the persons voting at the Company Meeting (other than as may be required under the Interim Order), shall become part of this Plan of Arrangement for all purposes.
- (c) Any amendment, modification or supplement to this Plan of Arrangement that is approved or directed by the Court following the Company Meeting shall be effective only if (i) it is consented to in writing by the Consenting Parties, and (ii) if required by the Court, it is consented to by some or all of the Company Shareholders voting in the manner directed by the Court.
- (d) Any amendment, modification or supplement to this Plan of Arrangement may be made following the Effective Date unilaterally by Westaim Delaware; provided that (i) if the Investment Agreement has not been terminated in accordance with its terms, it is consented to in writing by the Investor, acting reasonably; and (ii) it concerns a matter which, in the reasonable opinion of Westaim Delaware, is of an administrative nature required to better give effect to the implementation of this Plan of Arrangement and is not adverse to the economic interest of any former holder of Company Common Shares.

## **ARTICLE 6 FURTHER ASSURANCES**

### **Section 6.1 Further Assurances**

Notwithstanding that the transactions and events set out herein shall occur and be deemed to occur in the order set out in this Plan of Arrangement without any further act or formality, each of the Consenting Parties shall make, do and execute, or cause to be made, done and executed, all such further acts, deeds, agreements, transfers, assurances, instruments or documents as may reasonably be required by either of them in order to further document or evidence any of the transactions or events set out herein. The Company may, in accordance with the terms of the Investment Agreement (if applicable), determine not to implement this Plan of Arrangement, notwithstanding the passing of the Arrangement Approval Resolution by the Company Shareholders and the receipt of the Final Order.

## **ARTICLE 7 U.S. SECURITIES LAW MATTERS**

### **Section 7.1 U.S. Securities Law Matters**

Notwithstanding any provision herein to the contrary, the Consenting Parties agree that this Plan of Arrangement will be carried out with the intention that all Westaim Delaware Shares to be issued to Company Shareholders in exchange for their Company Common Shares pursuant to Section 2.2(d)(v) of this Plan of Arrangement will be issued and exchanged in reliance on the exemption from the registration requirements of the U.S. Securities Act provided by Section 3(a)(10) thereof and exemptions from applicable U.S. state securities Laws and pursuant to the terms, conditions and procedures set forth herein and in the Investment Agreement (if applicable).

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**EXHIBIT A**

**DELAWARE CERTIFICATE OF DOMESTICATION  
AND CERTIFICATE OF INCORPORATION**

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**EXHIBIT B**  
**DELAWARE BY-LAWS**

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ANNEX IV

FORM OF DELAWARE CERTIFICATE OF INCORPORATION

**CERTIFICATE OF INCORPORATION**  
**OF**  
**THE WESTAIM CORPORATION**

**ARTICLE I**

Section 1.1 Name. The name of the Corporation is The Westaim Corporation (the "Corporation").

**ARTICLE II**

Section 2.1 Address. The registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, Delaware 19808; and the name of the Corporation's registered agent at such address is Corporation Service Company.

**ARTICLE III**

Section 3.1 Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL").

**ARTICLE IV**

Section 4.1 Capitalization. The total number of shares of all classes of stock that the Corporation is authorized to issue is 260,000,000 shares, consisting of (A) 100,000,000 shares of Preferred Stock, par value \$0.001 per share ("Preferred Stock") and (B) 160,000,000 shares of Common Stock, par value \$0.001 per share ("Common Stock"). The number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares of such class or series, as applicable, then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock or Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (this "Certificate of Incorporation") or any certificate of designations relating to any series of Preferred Stock.

Section 4.2 Preferred Stock.

(a) General. The Board of Directors of the Corporation (the "Board") is hereby expressly authorized, subject to any limitations prescribed by the DGCL, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers (if any) of the shares of such series, and the powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof,

of the shares of such series and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designations with respect thereto. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(b) Voting Rights. Except as otherwise required by applicable law (including applicable rules and regulations promulgated under any applicable securities exchange, collectively “applicable law”), holders of a series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designations relating to such series).

#### Section 4.3 Common Stock.

(a) Voting Rights.

(i) Except as otherwise provided in this Certificate of Incorporation or as required by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; *provided, however*, that to the fullest extent permitted by applicable law, holders of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL.

(ii) Except as otherwise provided in this Certificate of Incorporation or required by applicable law, the holders of Common Stock having the right to vote in respect of such Common Stock shall vote together as a single class (or, if the holders of one or more series of Preferred Stock are entitled to vote together with the holders of Common Stock having the right to vote in respect of such Common Stock, as a single class with the holders of such other series of Preferred Stock) on all matters submitted to a vote of the stockholders having voting rights generally.

(b) Dividends and Distributions. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Common Stock with respect to the payment of dividends and other distributions in cash, stock of any corporation or property of the Corporation, the holders of Common Stock shall be entitled to receive ratably, in proportion to the number of shares held by each such stockholder, such dividends and other distributions as may from time to time be declared by the Board in its discretion out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(c) Liquidation, Dissolution or Winding Up. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over the Common Stock as to distributions upon dissolution or liquidation or winding up shall be entitled, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder.

## ARTICLE V

### Section 5.1 By-Laws.

(a) In furtherance and not in limitation of the powers conferred by the DGCL, the Board is expressly authorized to make, amend, alter, change, add to or repeal the by-laws of the Corporation (as the same may be amended from time to time, the “By-Laws”) without the assent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware, any applicable law or this Certificate of Incorporation.

(b) In addition to any vote of the holders of any class or series of capital stock of the Corporation required herein (including any certificate of designations relating to any series of Preferred Stock), by the By-Laws or pursuant to applicable law, the affirmative vote of the holders of at least a majority of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith; *provided that*, that notwithstanding anything to the contrary contained in this Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote of the stockholders, the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required in order for the stockholders of the Corporation to alter, amend, repeal or rescind, in whole or in part, any provision of Article I, Article II or Article IV of the By-Laws of the Corporation, or to adopt any provision inconsistent therewith.

## ARTICLE VI

### Section 6.1 Board of Directors.

(a) Powers. Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The total number of directors constituting the whole Board shall be seven (7), which may be modified from time to time exclusively by resolution adopted by the Board. The initial directors constituting the Board and their respective mailing addresses are as follows:

Ian Delaney	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
John Gildner	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
Lisa Mazzocco	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
Cameron MacDonald	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
Kevin Parker	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
Michael Siegel	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9
Bruce Walter	c/o The Westaim Corporation 70 York Street, Suite 1700 Toronto, Ontario, Canada M5J 1S9

(b) Vacancy. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding, any newly-created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, retirement, disqualification, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director (and not by the stockholders). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the Board and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement, disqualification or removal.

(c) Resignation. Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission permitted by the By-Laws. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock of the Corporation, voting separately as a series or together with one or more other such series, as the case may be) may be removed with or without cause and only upon the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. In case the Board or any one or more directors should be so removed, new directors may be elected pursuant to Section 6.1(b).

(d) Preferred Directors. Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto. Notwithstanding Section 6.1(a), the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.1(a) hereof, and the total number of directors constituting the whole Board shall be automatically adjusted accordingly.

(e) Written Ballot. Directors of the Corporation need not be elected by written ballot unless the By-Laws shall so provide.

## ARTICLE VII

Section 7.1 Meetings of Stockholders. Any action required or permitted to be taken by the holders of stock of the Corporation must be effected at a duly called annual or special meeting of such holders and may not be effected by any consent in writing by such holders unless such action is recommended or approved by all directors of the Corporation then in office; *provided, however,* that any action required or permitted to be taken, to the extent expressly permitted by the certificate of designations relating to one or more series of Preferred Stock, by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series 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 and shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business, or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation or as otherwise provided in the By-Laws.

## ARTICLE VIII

Section 8.1 Limited Liability of Directors and Officers. To the fullest extent permitted by law, no director or officer of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director or officer (as applicable), except to the extent such an exemption from liability or limitation thereof is not permitted under the DGCL. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors or officers, then the liability of a director or officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this ARTICLE VIII shall eliminate, reduce or otherwise adversely affect any limitation on the

personal liability of a director or officer of the Corporation existing prior to such amendment or repeal.

Section 8.2 Director and Officer Indemnification and Advancement of Expenses. The Corporation, to the fullest extent permitted by law, shall indemnify and advance expenses to any Person made or threatened to be made a party to any action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she is or was a director or officer of the Corporation or any predecessor of the Corporation, or, while serving as a director or officer of the Corporation, serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Section 8.3 Employee and Agent Indemnification and Advancement of Expenses. The Corporation, to the fullest extent permitted by law, may indemnify and advance expenses to any Person made or threatened to be made a party to an action, suit or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she is or was an employee or agent of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as an employee or agent at the request of the Corporation or any predecessor to the Corporation.

## ARTICLE IX

### Section 9.1 DGCL Section 203 and Business Combinations.

(a) Section 203. The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(b) Interested Stockholder. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation is a reporting issuer or the equivalent under the securities laws of any Canadian jurisdiction or the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act of 1934, as amended (the "Exchange Act"), with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(i) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;

(ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (A) persons who are directors and also officers and (B) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer or take-over bid; or

(iii) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(c) Definitions. For purposes of this ARTICLE IX, references to:

(i) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(ii) “associate” when used to indicate a relationship with any person, means: (A) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (B) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (C) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(iii) “business combination” when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (A) with the interested stockholder, or (B) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section 9.1(b) of this ARTICLE IX is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (A) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (B) pursuant to a merger under Section 251(g) of the DGCL; (C) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation

or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (D) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (E) any issuance or transfer of stock by the Corporation; *provided, however*, that in no case under items (C) through (E) of this subsection (3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (1) through (4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iv) "Closing Date" means the date on which the transactions contemplated by the Investment Agreement are completed.

(v) "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing Section 9.1(b) of ARTICLE IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(vi) "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (A) is the owner of 15% or more of the outstanding voting stock of the Corporation or (B) is an Affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the Affiliates and associates of such person; *provided, however*, that "interested stockholder"

shall not include (a) any Stockholder Party, any Stockholder Party Transferee or any of their respective Affiliates or, if the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, any "group," or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act if a majority of the aggregate shares of voting stock of the Corporation owned by such group immediately prior to the business combination or the transaction which resulted in the stockholder becoming an interested stockholder were owned (without giving effect to beneficial ownership attributed to such person pursuant to Section 13(d)(3) of the Exchange Act or Rule 13d-5 of the Exchange Act) by one or more Stockholder Parties or Stockholder Party Transferees, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; *provided, further*, that in the case of clause (b) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(vii) "Investment Agreement" means that certain Investment Agreement, dated as of October 9, 2024, by and among (i) Wembley Group Partners, LP, (ii) the Corporation, (iii) solely for purposes of Sections 2.04(c), 4.03, 4.05, 6.01, 6.11 and 6.17 thereof, Arena Investors Group Holdings, LLC, a Delaware limited liability company, and (iv) solely for purposes of Sections 2.04(d) and 4.03 thereof, Daniel Zwirn and Lawrence Cutler, as amended from time to time. A copy of the Investment Agreement will be available to any stockholder upon request therefor.

(viii) "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its Affiliates or associates:

- (1) beneficially owns such stock, directly or indirectly;
- (2) has (A) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer or take-over bid made by such person or any of such person's Affiliates or associates until such tendered stock is accepted for purchase or exchange; or (B) the right to vote such stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (B) of subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose Affiliates or associates beneficially own, directly or indirectly, such stock.

(ix) “person” means any individual, corporation, partnership, unincorporated association or other entity.

(x) “stock” means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(xi) “Stockholder Party” means, from and after the Closing Date, Wembley Group Partners, LP. The term “Stockholder Party” shall have a correlative meaning to “Stockholder Parties.”

(xii) “Stockholder Party Transferee” means, with respect to any Stockholder Party, (a) any Affiliate of such Stockholder Party, or (b) with respect to any Stockholder Party that is an investment fund, vehicle or similar entity, any other investment fund, vehicle or similar entity that is controlled by or under common control with (i) such Stockholder Party, (ii) an Affiliate of such Stockholder Party or (iii) an entity, or an Affiliate of an entity, that manages or controls such Stockholder Party.

(xiii) “voting stock” means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

## ARTICLE X

### Section 10.1 Competition and Corporate Opportunities.

(a) General. In recognition and anticipation that members of the Board who are not employees of the Corporation (“Non-Employee Directors”) and their respective Affiliates (as defined below) and Affiliated Entities (as defined below) may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this ARTICLE X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve any of the Non-Employee Directors or their respective Affiliates and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith, which shall apply unless the Corporation and a Non-Employee Director or any of their Affiliated Entities otherwise agree in writing.

(b) Business Opportunity. No Non-Employee Director or his or her Affiliates or Affiliated Entities (the Persons (as defined below) above being referred to, collectively, as

“Identified Persons” and, individually, as an “Identified Person”) shall, to the fullest extent permitted by applicable law, have any duty to refrain from directly or indirectly (i) engaging in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates, has historically engaged, now engages or proposes to engage at any time or (ii) otherwise competing with the Corporation or any of its Affiliates, and, to the fullest extent permitted by applicable law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted by applicable law, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 10.1(c) of this ARTICLE X. Subject to Section 10.1(c) of this ARTICLE X, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by applicable law, have no duty to communicate or offer such transaction or other business opportunity to the Corporation or any of its Affiliates and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person.

(c) Corporate Business Opportunity. The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered or presented to, or acquired or developed by, such person solely in his or her capacity as a director or officer of the Corporation, and the provisions of Section 10.1(b) of this ARTICLE X shall not apply to any such corporate opportunity.

(d) Exceptions to Business Opportunity. In addition to and notwithstanding the foregoing provisions of this ARTICLE X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation’s business or is of no practical advantage to the Corporation, (iii) is one in which the Corporation has no interest or reasonable expectancy, or (iv) is one presented to any Person for the benefit of a member of the Board or such member’s Affiliate over which such member of the Board has no direct or indirect influence or control, including, but not limited to, a blind trust.

(e) Definitions. For purposes of this ARTICLE X, references to:

(i) “Affiliate” means (A) in respect of a member of the Board, any Person that, directly or indirectly, is controlled by such member of the Board (other than the Corporation and any entity that is controlled by the Corporation) and (B) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation;

(ii) “Affiliated Entity” means (A) any Person of which a Non-Employee Director serves as an officer, director, employee, agent or other representative (other than the Corporation and any entity that is controlled by the Corporation), (B) any direct or indirect partner, stockholder, member, manager or other representative of such Person or (C) any person controlling, controlled by or under common control with any of the foregoing, including any investment fund or vehicle under common management; and

(iii) “Person” means any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(f) Notice and Consent. To the fullest extent permitted by applicable law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this ARTICLE X.

(g) Amendment. Any alteration, amendment, addition to or repeal of this ARTICLE X shall require the affirmative vote of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Neither the alteration, amendment, addition to or repeal of this ARTICLE X, nor the adoption of any provision of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) inconsistent with this ARTICLE X, shall eliminate or reduce the effect of this ARTICLE X in respect of any business opportunity first identified or any other matter occurring, or any cause of action, suit or claim that, but for this ARTICLE X, would accrue or arise, prior to such alteration, amendment, addition, repeal or adoption. This ARTICLE X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the By-Laws, the Investor Rights Agreement, any indemnification agreement between such Person and the Corporation or any of its subsidiaries or applicable law.

## ARTICLE XI

Section 11.1 Severability. If any provision of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

## ARTICLE XII

Section 12.1 Forum.

(a) Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for: (i) any derivative action or proceeding brought on behalf of the Corporation; (ii) any action asserting a claim of breach of a fiduciary duty owed by, or other wrongdoing by, any

current or former director, officer, other employee or stockholder of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, or a claim of aiding and abetting any such breach of fiduciary duty; (iii) any action or proceeding against the Corporation or any current or former director, officer or other employee of the Corporation or any stockholder (A) arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the By-Laws (as each may be amended, restated, modified, supplemented or waived from time to time) or (B) as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware; (iv) any action or proceeding to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the By-Laws (including any right, obligation or remedy thereunder); (v) any action asserting a claim against the Corporation or any director, officer or other employee of the Corporation or any stockholder, governed by the internal affairs doctrine; and (vi) any action asserting an "internal corporate claim" as that term is defined in Section 115 of the DGCL.

(b) Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, against the Corporation or any director or officer of the Corporation.

(c) Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the Corporation shall be deemed to have notice of and to have consented to the provisions of this ARTICLE XII.

### **ARTICLE XIII**

Section 13.1 Amendments. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, in addition to any vote required by applicable law, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class: ARTICLE V; ARTICLE VI; ARTICLE VII; ARTICLE VIII; ARTICLE IX; ARTICLE XII; and this ARTICLE XIII. Further, any alteration, amendment, addition to or repeal of ARTICLE X shall, in addition to any vote required by applicable law, require the affirmative vote of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Except as expressly provided in the foregoing sentences and the remainder of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) and any vote required by applicable law, this Certificate of Incorporation may be amended by the affirmative vote of the holders of at least a majority of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

**ARTICLE XIV**

14.1 Incorporator. The name and address of the incorporator are as follows:

Name: J. Cameron MacDonald

Mailing Address: 70 York Street, Suite 1700, Toronto, Ontario, Canada M5J 1S9

79392258.7

I, The Undersigned, for the purpose of forming a corporation under the laws of the State of Delaware, do make, file and record this Certificate, and do certify that the facts herein stated are true, and I have accordingly hereunto set my hand this \_\_\_\_day of \_\_\_\_\_, 202\_\_.

Name: \_\_\_\_\_

By: \_\_\_\_\_

ANNEX V

FORM OF INITIAL DELAWARE BYLAWS

**BY-LAWS**  
**OF**  
**THE WESTAIM CORPORATION**

(a Delaware corporation)

(Effective [●])

**ARTICLE I**

**STOCKHOLDERS**

Section 1.1 Annual Meeting. The annual meeting of the stockholders of The Westaim Corporation (the “Corporation”) for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications pursuant to Section 1.12(c)(ii), as may be designated from time to time by the Board of Directors of the Corporation (the “Board”). The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled.

Section 1.2 Special Meetings. Except as otherwise required by the General Corporation Law of the State of Delaware (the “DGCL”) or the certificate of incorporation of the Corporation (the “Certificate of Incorporation”), and subject to the rights of the holders of any class or series of Preferred Stock (as defined in the Certificate of Incorporation), special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. Special meetings may be held either at a place, within or without the State of Delaware, or by means of remote communications pursuant to Section 1.12(c)(ii) as the Board may determine. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled.

Section 1.3 Notice of Meetings. Except as otherwise provided by the DGCL, the Certificate of Incorporation, these By-Laws or applicable law (including applicable rules and regulations promulgated under any applicable securities exchange, collectively “applicable law”), notice of the date, time, place (if any), the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto (unless a different time is specified by applicable law), to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States or Canadian mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notices of meetings otherwise may be

given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 1.4 Quorum. The holders of not less than 25% of the voting power of the stock issued and outstanding and entitled to vote thereat, which shall consist of at least two persons, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by applicable law or by the Certificate of Incorporation; *provided, however*, that if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or, by a majority in voting power thereof, the stockholders present (either in person or by proxy) may, to the extent permitted by applicable law, adjourn the meeting from time to time without further notice other than announcement at the meeting of the date, time and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting, until a quorum shall be present or represented. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, the holders of not less than 25% of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. At any adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Notice need not be given of any adjourned meeting if the time, date and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided, however*, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 1.5 Conduct of Business. The Chairman of the Board, or in the absence of the Chairman of the Board or at the Chairman of the Board's direction, the Chief Executive Officer, or in the Chief Executive Officer's absence or at the Chief Executive Officer's direction, any officer of the Corporation shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer's absence, an Assistant Secretary, shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening the meeting and adjourning the meeting (whether or not a quorum is present), announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote, imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, establishing procedures for the transaction of business at the meeting (including the dismissal of business not properly presented), maintaining order at the meeting and safety of

those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders. Unless and to the extent determined by the Board or the chairman over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.6 Proxies. At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, subject to applicable law. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the DGCL or other applicable laws, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder may execute a writing authorizing another person or persons to act for the stockholder as proxy, and execution of the writing may be accomplished by the stockholder or the stockholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing by means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such means of electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. If it is determined that such electronic transmissions are valid, the inspector or inspectors of stockholder votes or, if there are no such inspectors, such other persons making that determination shall specify the information upon which they relied.

A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the preceding paragraphs of this Section 1.6 (including any electronic transmission) may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 1.7 Voting. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws, the DGCL or applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, where a separate vote by a class or

series or classes or series is required and a quorum is present, the affirmative vote of a majority of the shares of such class or series or classes or series present in person or represented by proxy shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws, the DGCL or applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 1.8 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board 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, and which record date shall, unless otherwise required by applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, 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 may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) 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 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 may fix 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 not be more than sixty (60) days prior to such action. If no such 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 adopts the resolution relating thereto.

Section 1.9 Action by Written Consent. At any time when action by one or more classes or series of stockholders of the Corporation is permitted to be taken by written consent pursuant to the terms and limitations set forth in the Certificate of Incorporation, then, subject to applicable law, the provisions of this section shall apply. All consents properly delivered in accordance with the Certificate of Incorporation and the DGCL shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as required by the DGCL, written consents signed by the holders of a sufficient number of shares to take such corporate action are so delivered to the Corporation in accordance with the applicable provisions of the DGCL. 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 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 notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in the applicable provisions of the DGCL. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the DGCL, 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 and prior action by the Board is required by the DGCL, 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 adopts the resolution taking such prior action.

Section 1.10 List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) 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 (b) 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. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.11 Inspector of Stockholder Votes. The Board, in advance of all meetings of the stockholders, may appoint one or more inspectors of stockholder votes, who may be

employees or agents of the Corporation or stockholders or their proxies, but who shall not be directors of the Corporation or candidates for election as directors. In the event that the Board fails to so appoint one or more inspectors of stockholder votes or, in the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by applicable law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law.

Section 1.12 Meetings.

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 1.3 of these By-Laws, (B) by or at the direction of the Board or any authorized committee thereof or (C) by any stockholder of the Corporation who is entitled to vote on such election or such other business at the meeting, who has complied with the notice procedures set forth in subparagraphs (ii) and (iii) of this Section 1.12(a) and who was a stockholder of record at the time such notice was delivered to the Secretary of the Corporation.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 1.12(a)(i)(D) of these By-laws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (even if such matter is already the subject of any notice to the stockholders or a public announcement from the Board), and, in the case of business other than nominations of persons for election to the Board, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days 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 scheduled for more than thirty (30) days before, or more than seventy (70) days following, such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not later than the tenth day following the day on which public announcement of the date of such

meeting is first made. For purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”) (or any successor provision), as applicable, the date for notice specified in this Section 1.12(a)(ii) shall be the earlier of the date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4. For purposes of the first annual meeting of stockholders following the adoption of these By-Laws, the date of the preceding year’s annual meeting shall be deemed to be [●] of the preceding calendar year.

Such stockholder’s notice shall set forth (A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) a completed director nominee questionnaire, which questionnaire shall be provided by the Corporation, within five days of any written request, to such stockholder, which shall include all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to, as applicable, Canadian securities laws and Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including such person’s written consent to being named in the proxy circular or statement as a nominee and to serving as a director if elected, (2) stating whether such person is or may become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation or has received or may receive any compensation or other payment from any person or entity other than the Corporation, in each case in connection with candidacy, service or action as a director of the Corporation, (3) certifying that such person, if elected, will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines and any other policies and guidelines of the Corporation applicable to directors, as well as any applicable law, rule or regulation or listing requirement; (B) 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 text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest, direct or indirect, by way of ownership of securities or otherwise in such business of such stockholder and the beneficial owner, if different, on whose behalf the proposal is made; (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the Corporation’s books and records, and of such beneficial owner, (2) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (3) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business or nomination, (4) a representation whether the stockholder or the beneficial owner, if any, will be or is part of a group which will (a) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation’s outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, (5) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder’s and/or beneficial owner’s acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder’s and/or beneficial owner’s acts or omissions as a stockholder of the

Corporation, (6) if the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, a representation whether such stockholder intends or is part of a group which intends to solicit proxies or votes from stockholders in support of director nominees other than the Corporation's nominees or nomination in accordance with Rule 14a-19 under the Exchange Act, and if so, providing the information required to be provided pursuant to Rule 14a-19(b) under the Exchange Act and (7) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with, as applicable, Canadian securities laws, Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including the information required to be provided pursuant to Rule 14a-19 under the Exchange Act, if applicable; (D) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"); and (E) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) the intent or effect of which may be (1) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (2) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (3) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. A stockholder providing notice of a proposed nomination for election to the Board or other business proposed to be brought before a meeting (whether given pursuant to this Section 1.12(a)(ii) or Section 1.12(b)) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or any adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information

as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under Canadian securities laws, the Exchange Act and rules and regulations thereunder and other applicable laws.

If the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, the foregoing notice requirements of Section 1.12(a)(ii) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 1.12(a)(ii) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

If the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, a stockholder and/or beneficial owner who has delivered a notice of nomination in accordance with Rule 14a-19 under the Exchange Act shall, not later than five (5) business days prior to the date of the applicable meeting of stockholders, deliver to the Corporation reasonable evidence that such stockholder and/or such beneficial owner has met and complied with all of the requirements of these By-Laws and of Rule 14a-19 under the Exchange Act. Notwithstanding anything to the contrary in these By-Laws, if the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, unless otherwise required by applicable law, if (1) any stockholder or beneficial owner, if any, on whose behalf a nomination is made provides notice pursuant to Rule 14a-19(b) under the Exchange Act or includes the information required by Rule 14a-19(b) in a preliminary or definitive proxy statement previously filed by such person (it being understood that such notice or filing shall be in addition to, and not in lieu of, the notices required under these By-Laws) and (2) (A) such stockholder or beneficial owner subsequently either (i) notifies the Corporation that it no longer intends to solicit proxies in support of the election or reelection of such director nominee in accordance with Rule 14a-19(b) under the Exchange Act or (ii) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder or such beneficial owner has met the requirements of Rule 14a-19(a)(3) under the Exchange Act in accordance with the preceding sentence), then the nomination of each such proposed nominee shall be disregarded and no vote on the election of such proposed nominee shall occur, notwithstanding that such nomination is set forth in the notice of meeting or other proxy materials and notwithstanding that proxies in respect of the election of such proposed nominees may have been received by the Corporation.

(iii) Notwithstanding anything in the second sentence of Section 1.12(a)(ii) to the contrary, in the event that the number of directors to be elected to the Board is increased, effective after the time period for which nominations would otherwise be due under Section 1.12(a)(ii), and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.12 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 a public announcement of such increase is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 1.3 of these By-Laws. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board or a committee thereof or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who has complied with the notice procedures set forth in this Section 1.12 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by Section 1.12(a)(ii) is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(c) General.

(i) Only persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible to be elected 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 1.12. Except as otherwise provided by applicable law, the Certificate of Incorporation or these By-Laws, 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 in accordance with the procedures set forth in this Section 1.12 and, if any proposed nomination or business is not in compliance with this Section 1.12, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

Notwithstanding the foregoing provisions of this Section 1.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce

such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(ii) If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may, by means of remote communication participate in a meeting of stockholders of the Corporation and be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; *provided, however*, that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder; (B) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (C) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(iii) For purposes of this Section 1.12, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service in Canada and/or the United States, as applicable, in a document publicly filed with or furnished by the Corporation to, as applicable, applicable securities regulatory authorities in Canada pursuant to Canadian securities laws and the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or otherwise disseminated in a manner constituting “public disclosure” under, as applicable, Canadian securities laws and Regulation FD promulgated by the Securities and Exchange Commission.

(iv) No adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice (or extend any notice time period) of such meeting for purposes of this Section 1.12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 1.12 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(v) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of Canadian securities laws, the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.12; *provided, however*, that, to the fullest extent permitted by applicable law, any references in these By-Laws to Canadian securities laws or the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.12 (including Section 1.12(a)(i)(D) and Section 1.12(b) hereof), and compliance with Section 1.12(a)(i)(D) and Section 1.12(b) shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in this Section 1.12 shall apply to the right, if any,

of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

## ARTICLE II

### **BOARD OF DIRECTORS**

Section 2.1 General. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships and except as otherwise expressly provided in the Certificate of Incorporation) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors in accordance with the terms of applicable law and the Certificate of Incorporation, as applicable. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business. Except as otherwise provided by applicable law, these By-Laws or the Certificate of Incorporation, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 2.2 Filling Vacancies. Subject to the Certificate of Incorporation, unless otherwise required by the DGCL or Section 2.4 of these By-Laws, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, removal, retirement, disqualification or otherwise) shall be filled only by a majority of the directors then in office, although less than a quorum, by any authorized committee of the Board or by a sole remaining director.

Section 2.3 Meetings. Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board, the Chief Executive Officer, or by a majority of the total number of directors then in office, by written notice, including facsimile, e-mail or other means of electronic transmission, duly served on or sent and delivered to each director in accordance with Section 10.2. Notice of each special meeting of the Board shall be given, as provided in Section 10.2, to each director (a) at least twenty-four (24) hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (b) at least two (2) days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (c) at least five (5) days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director 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), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 2.4 Preferred Stock Representation. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, as applicable, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, and other features of such directorships shall be governed by the terms of the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the total number of directors fixed by the Board pursuant to the Certificate of Incorporation and these By-Laws. Except as otherwise expressly provided in the terms of such series, the number of directors that may be so elected by the holders of any such series of stock shall be elected for terms expiring at the next annual meeting of stockholders, and vacancies among directors so elected by the separate vote of the holders of any such series of Preferred Stock shall be filled by the affirmative vote of a majority of the remaining directors elected by such series, or, if there are no such remaining directors, by the holders of such series in the same manner in which such series initially elected a director.

Section 2.5 Committees. The Board may from time to time establish one or more committees of the Board to serve at the pleasure of the Board, which shall be comprised of such members of the Board and have such duties as the Board shall from time to time determine. Any director may belong to any number of committees of the Board. Subject to the Certificate of Incorporation, the Board 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. In the absence or disqualification of a member of a 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. Unless otherwise provided in the Certificate of Incorporation, these By-Laws or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to a subcommittee any or all of the powers and authority of the committee.

Section 2.6 Written Action. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (including by electronic transmission), and the writing or writings (including any electronic transmission or transmissions) are filed with the minutes of proceedings of the Board.

Section 2.7 Electronic Participation. The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, 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 pursuant to this subsection shall constitute presence in person at such a meeting.

Section 2.8 Compensation of Directors. The Board may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation.

### **ARTICLE III**

#### **OFFICERS**

Section 3.1 Election. The Board shall elect officers of the Corporation, including a Chief Executive Officer, a President and a Secretary. The Board may also from time to time elect such other officers as it may deem proper or may delegate to any elected officer of the Corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior or Corporate, or may be given such other designation or combination of designations as the Board or the Chief Executive Officer may determine. Any two or more offices may be held by the same person. The Board may also elect or appoint a Chairman of the Board, who may or may not also be an officer of the Corporation. The Board may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these By-Laws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 3.2 Term. All officers of the Corporation elected by the Board shall hold office for such terms as may be determined by the Board or, except with respect to his or her own office, the Chief Executive Officer, or until their respective successors are chosen and qualified or until his or her earlier resignation or removal. Any officer may be removed from office at any time either with or without cause by the Board, or, in the case of appointed officers, by the Chief Executive Officer or any elected officer upon whom such power of removal shall have been conferred by the Board.

Section 3.3 Powers and Duties. Each of the officers of the Corporation elected by the Board or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

Section 3.4 Delegation. Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

## ARTICLE IV

### INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 4.1 Indemnification of Officers and Directors. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative or any other type whatsoever (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnitee”), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; except as provided in Section 4.3 with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 4.2 Advance of Expenses. In addition to the right to indemnification conferred in Section 4.1, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney’s fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article IV (which shall be governed by Section 4.3) (hereinafter an “advancement of expenses”); *provided, however,* that, if (a) the DGCL requires or (b) in the case of an advance made in a proceeding brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee 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 solely upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined after final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to indemnification under this Article IV or otherwise.

Section 4.3 Non-Exclusivity of Rights. If a claim under Section 4.1 or Section 4.2 is not paid in full by the Corporation within (a) sixty (60) days after a written claim for indemnification has been received by the Corporation or (b) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time

thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by applicable law, if the indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense of the Corporation that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IV or otherwise shall be on the Corporation.

#### Section 4.4 Rights of the Corporation.

(a) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article IV, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article IV, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by applicable law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(b) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation or as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article IV, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by the indemnitee-related entities and no right of

advancement, indemnification or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation under this Article IV. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 4.4(b), entitled to enforce this Section 4.4(b).

For purposes of this Section 4.4(b), the following terms shall have the following meanings:

(i) The term “indemnitee-related entities” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(ii) The term “jointly indemnifiable claims” shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

Section 4.5 Continuation of Indemnification. The rights conferred upon indemnitees in this Article IV shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee’s heirs, executors and administrators. Any amendment, alteration or repeal of this Article IV that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 4.6 D&O Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense,

liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 4.7 Indemnification of Employees or Agents. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IV with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

## ARTICLE V

### CORPORATE BOOKS

The books of the Corporation may be kept inside or outside of the State of Delaware at such place or places as the Board may from time to time determine.

## ARTICLE VI

### CHECKS, NOTES, PROXIES, ETC.

All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board or such officer or officers who may be delegated such authority. Proxies to vote and consents with respect to securities of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or by such officers as the Chairman of the Board, Chief Executive Officer or the Board may from time to time determine.

## ARTICLE VII

### SHARES AND OTHER SECURITIES OF THE CORPORATION

Section 7.1 Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2 Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two authorized officers of the Corporation, which authorized officers shall include, without limitation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.3 Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by applicable law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.4 Transfer of Stock.

(a) Transfers of record of shares of stock of the Corporation shall be made only upon the books administered by or on behalf of the Corporation and only upon proper transfer instructions, including by Electronic Transmission, pursuant to the direction of the registered holder thereof, such person's attorney lawfully constituted in writing, or from an individual presenting proper evidence of succession, assignment or authority to transfer the shares of stock; or, in the case of stock represented by certificate(s) upon delivery of a properly endorsed certificate(s) for a like number of shares or accompanied by a duly executed stock transfer power.

(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 7.5 Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.6 Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

## **ARTICLE VIII**

### **FISCAL YEAR**

The fiscal year of the Corporation shall end on December 31 of each calendar year, unless otherwise determined by resolution of the Board.

## **ARTICLE IX**

### **CORPORATE SEAL**

The corporate seal shall have inscribed thereon the name of the Corporation. In lieu of the corporate seal, when so authorized by the Board or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 10.1 Notice to Attendees. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting need not be given to any person who shall attend such meeting (except when the person 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), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 10.2 Means of Giving Notice. Except as otherwise set forth in any applicable law or any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting shall be given by the following means:

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (A) if given by hand delivery, orally, or by telephone, when actually received by the director, (B) if sent through the United States or Canadian mail, when deposited in the United States or Canadian mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (C) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records

of the Corporation, (D) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (E) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (F) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Electronic Transmission. “Electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder’s consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within sixty (60) days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(d) Exceptions to Notice Requirements.

(i) Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, 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 that 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 with the Secretary of State of Delaware, 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.

(ii) Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (A) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (B) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12) month period, have been mailed addressed to such stockholder at such stockholder’s address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the

Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (A) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 10.3 Interpretation. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10.4 Certificate of Incorporation Governs. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation or the DGCL, the provision of these By-Laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

## **ARTICLE XI**

### **AMENDMENT**

These By-Laws may be made, amended, altered, changed, added to or repealed as set forth in the Certificate of Incorporation.

ANNEX VI

FORM OF ARRANGEMENT APPROVAL RESOLUTION

**THE WESTAIM CORPORATION**  
**ARRANGEMENT RESOLUTION**

**BE IT RESOLVED THAT:**

1. The arrangement (the “**Arrangement**”) of The Westaim Corporation (the “**Company**”) under section 193 of the *Business Corporations Act* (Alberta) (the “**Act**”), as more particularly described and set forth in the management information circular of the Company dated November 19, 2024 (the “**Circular**”) accompanying the notice of this meeting, as the Arrangement may be, or may have been, modified, amended or supplemented in accordance with the terms of the plan of arrangement in respect of the Arrangement (as such plan of arrangement may be, or may have been, modified, amended or supplemented in accordance with its terms, the “**Plan of Arrangement**”), and all transactions contemplated by the Arrangement are hereby authorized, approved, ratified and confirmed.
2. The Plan of Arrangement, as it may be, or may have been, modified, amended or supplemented in accordance with its terms, the full text of which is set out as Appendix “G” to the Circular, and the completion of each of the steps described in the Plan of Arrangement, are hereby authorized, approved, ratified and confirmed.
3. The (i) actions of the directors of the Company in approving the Arrangement and the Plan of Arrangement, (ii) actions of the directors and officers of the Company in causing the performance by the Company of its obligations under the Arrangement and the Plan of Arrangement, and (iii) Company’s application for an interim order from the Court of King’s Bench of Alberta (the “**Court**”), are hereby authorized, approved, ratified and confirmed.
4. The Company is hereby authorized to apply for a final order from the Court to approve the Arrangement on the terms set forth in the Plan of Arrangement.
5. Notwithstanding that this resolution has been passed (and the Arrangement and the Plan of Arrangement authorized, approved and adopted) by the holders of common shares of the Company (“**Company Shareholders**”) entitled to vote hereon or that the Arrangement has been approved by the Court, the directors of the Company are hereby authorized and empowered, without notice to or approval of the Company Shareholders: to (i) amend, supplement or otherwise modify the Plan of Arrangement to the extent permitted by its terms; and (ii) subject to the terms of the Investment Agreement dated October 9, 2024 among the Company, Wembley Group Partners, LP and, solely for purposes of specific sections enumerated therein, Arena Investors Group Holdings, LLC, Dan Zwirn and Lawrence Cutler, as it may be, or may have been, modified, amended or supplemented in accordance with its terms (the “**Investment Agreement**”), if applicable, not to proceed with the Arrangement or any transactions contemplated thereby and any related transactions.
6. Any director or officer of the Company is hereby authorized, empowered and instructed, acting for, in the name and on behalf of the Company, to execute or cause to be executed, under the seal of the Company or otherwise, and to deliver or to cause to be delivered, for filing with the Registrar under the Act, articles of arrangement and such other documents as are necessary or desirable to give effect to the Arrangement and the Plan of Arrangement and the transactions contemplated thereby.
7. Any director or officer of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other

acts and things as such person determines may be necessary or desirable to give full effect to the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of any such other document or instrument or the performance of any such other act or thing.

ANNEX VII

FORM OF PRIVATE PLACEMENT APPROVAL RESOLUTION

**THE WESTAIM CORPORATION**  
**PRIVATE PLACEMENT RESOLUTION**

**BE IT RESOLVED THAT:**

1. The issuance to Wembley Group Partners, LP (the “**Investor**”) of (i) 71,878,947 common shares (“**Common Shares**”) of The Westaim Corporation (the “**Company**”), (ii) par warrants to purchase 7,822,057 Common Shares having an exercise price of C\$4.02 per Common Share, and (iii) incentive warrants to purchase 23,466,171 Common Shares having an exercise price of C\$4.75 per Common Share (in each case subject to adjustment in accordance with the terms of the Investment Agreement (as defined below) and the warrants) (the “**Private Placement**”) pursuant to the Investment Agreement dated October 9, 2024 among the Company, the Investor and, solely for purposes of specific sections enumerated therein, Arena Investors Group Holdings, LLC, Dan Zwirn and Lawrence Cutler, as amended on November 15, 2024 and as it may be further modified, amended or supplemented in accordance with its terms (the “**Investment Agreement**”), all as more particularly described and set forth in the management information circular of the Company dated November 19, 2024 accompanying the notice of this meeting, is hereby authorized, approved, ratified and confirmed.
2. The (i) completion of the Private Placement as contemplated by the terms of the Investment Agreement and all matters relating thereto and (ii) actions of the directors and officers of the Company in approving the Private Placement and causing the performance by the Company of its obligations under the Investment Agreement in connection with the Private Placement, are hereby authorized, approved, ratified and confirmed.
3. The participation of the Investor in the Private Placement, which will result in the Investor becoming a “Control Person” as such term is defined in TSX Venture Exchange Policy 4.1 - *Private Placements*, is hereby authorized, approved, ratified and confirmed.
4. Notwithstanding that this resolution has been passed (and the Private Placement having been authorized, approved and adopted) by the holders of Common Shares (“**Company Shareholders**”) entitled to vote hereon, the directors of the Company are hereby authorized and empowered, without notice to or approval of the Company Shareholders to: (i) amend, supplement or otherwise modify the terms of the Private Placement to the extent permitted by the terms of the Investment Agreement; and (ii) subject to the terms of the Investment Agreement, not to proceed with the Private Placement or any transactions contemplated thereby and any related transactions.
5. Any director or officer of the Company is hereby authorized and directed for and on behalf of the Company to execute or cause to be executed and to deliver or cause to be delivered all such other documents and instruments and to perform or cause to be performed all such other acts and things as such person determines may be necessary or desirable to give full effect to the foregoing resolutions and the matters authorized thereby, such determination to be conclusively evidenced by the execution and delivery of any such other document or instrument or the performance of any such other act or thing.

ANNEX VIII

FORM OF ARENA REORGANIZATION APPROVAL RESOLUTION

## THE WESTAIM CORPORATION

### ARENA REORGANIZATION APPROVAL RESOLUTION

#### BE IT RESOLVED THAT:

1. The third amended and restated limited liability company agreement of Arena Investors Group, Holdings, LLC ("**Arena**"), substantially in the form as set forth in Appendix "I" to the management information circular of The Westaim Corporation (the "**Company**") dated November 19, 2024 (the "**Information Circular**"), is hereby confirmed and approved.
2. The contribution and exchange agreement between The Westaim Corporation of America ("**WCA**") (or the Company as successor to WCA) and Arena, substantially in the form as set forth in Appendix "J" to the Information Circular, is hereby confirmed and approved.
3. Any director or officer of the Company is hereby authorized and directed, for and on behalf of the Company, to do all things and execute and deliver all such agreements, documents and instruments and to do and perform all acts and things as such individual, in his or her discretion, deems necessary or advisable in order to give effect to the intent of this resolution and the matters authorized hereby.

ANNEX IX

A&R DELAWARE BYLAWS

**AMENDED AND RESTATED BY-LAWS**

**OF**

**THE WESTAIM CORPORATION**

(a Delaware corporation)

(Effective [●])

**ARTICLE I**

**STOCKHOLDERS**

Section 1.1 Annual Meeting. The annual meeting of the stockholders of The Westaim Corporation (the “Corporation”) for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications pursuant to Section 1.12(c)(ii), as may be designated from time to time by the Board of Directors of the Corporation (the “Board”). The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled.

Section 1.2 Special Meetings. Except as otherwise required by the General Corporation Law of the State of Delaware (the “DGCL”) or the certificate of incorporation of the Corporation (the “Certificate of Incorporation”), and subject to the rights of the holders of any class or series of Preferred Stock (as defined in the Certificate of Incorporation), special meetings of the stockholders of the Corporation may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. Special meetings may be held either at a place, within or without the State of Delaware, or by means of remote communications pursuant to Section 1.12(c)(ii) as the Board may determine. The Board may postpone, reschedule or cancel any special meeting of the stockholders previously scheduled.

Section 1.3 Notice of Meetings. Except as otherwise provided by the DGCL, the Certificate of Incorporation, these By-Laws or applicable law (including applicable rules and regulations promulgated under any applicable securities exchange, collectively “applicable law”), notice of the date, time, place (if any), the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto (unless a different time is specified by applicable law), to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States or Canadian mail, postage prepaid, directed to the stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notices of meetings otherwise may be

given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 1.4 Quorum. The holders of not less than 25% of the voting power of the stock issued and outstanding and entitled to vote thereat, which shall consist of at least two persons, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by applicable law or by the Certificate of Incorporation; *provided, however*, that if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or, by a majority in voting power thereof, the stockholders present (either in person or by proxy) may, to the extent permitted by applicable law, adjourn the meeting from time to time without further notice other than announcement at the meeting of the date, time and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting, until a quorum shall be present or represented. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, the holders of not less than 25% of the voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. At any adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Notice need not be given of any adjourned meeting if the time, date and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided, however*, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 1.5 Conduct of Business. The Chairman of the Board, or in the absence of the Chairman of the Board or at the Chairman of the Board's direction, the Chief Executive Officer, or in the Chief Executive Officer's absence or at the Chief Executive Officer's direction, any officer of the Corporation shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer's absence, an Assistant Secretary, shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening the meeting and adjourning the meeting (whether or not a quorum is present), announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote, imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, establishing procedures for the transaction of business at the meeting (including the dismissal of business not properly presented), maintaining order at the meeting and safety of

those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders. Unless and to the extent determined by the Board or the chairman over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.6 Proxies. At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, subject to applicable law. Without limiting the manner in which a stockholder may authorize another person or persons to act for the stockholder as proxy pursuant to the DGCL or other applicable laws, the following shall constitute a valid means by which a stockholder may grant such authority: (1) a stockholder may execute a writing authorizing another person or persons to act for the stockholder as proxy, and execution of the writing may be accomplished by the stockholder or the stockholder's authorized officer, director, employee or agent signing such writing or causing his or her signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature; or (2) a stockholder may authorize another person or persons to act for the stockholder as proxy by transmitting or authorizing by means of electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such means of electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder. If it is determined that such electronic transmissions are valid, the inspector or inspectors of stockholder votes or, if there are no such inspectors, such other persons making that determination shall specify the information upon which they relied.

A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

Any copy, facsimile telecommunication or other reliable reproduction of the writing or transmission created pursuant to the preceding paragraphs of this Section 1.6 (including any electronic transmission) may be substituted or used in lieu of the original writing or transmission for any and all purposes for which the original writing or transmission could be used, provided that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing or transmission.

Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 1.7 Voting. When a quorum is present at any meeting, the vote of the holders of a majority of the stock having voting power present in person or represented by proxy shall decide any question brought before such meeting, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws, the DGCL or applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, where a separate vote by a class or

series or classes or series is required and a quorum is present, the affirmative vote of a majority of the shares of such class or series or classes or series present in person or represented by proxy shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the Certificate of Incorporation, these By-Laws, the DGCL or applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 1.8 Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board 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, and which record date shall, unless otherwise required by applicable law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, 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 may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) 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 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 may fix 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 not be more than sixty (60) days prior to such action. If no such 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 adopts the resolution relating thereto.

Section 1.9 Action by Written Consent. At any time when action by one or more classes or series of stockholders of the Corporation is permitted to be taken by written consent pursuant to the terms and limitations set forth in the Certificate of Incorporation, then, subject to applicable law, the provisions of this section shall apply. All consents properly delivered in accordance with the Certificate of Incorporation and the DGCL shall be deemed to be recorded when so delivered. No written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as required by the DGCL, written consents signed by the holders of a sufficient number of shares to take such corporate action are so delivered to the Corporation in accordance with the applicable provisions of the DGCL. 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 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 notice of such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in the applicable provisions of the DGCL. Any action taken pursuant to such written consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof. In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board 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, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by the DGCL, 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 and prior action by the Board is required by the DGCL, 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 adopts the resolution taking such prior action.

Section 1.10 List of Stockholders Entitled to Vote. The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (*provided, however*, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) 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 (b) 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. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.11 Inspector of Stockholder Votes. The Board, in advance of all meetings of the stockholders, may appoint one or more inspectors of stockholder votes, who may be

employees or agents of the Corporation or stockholders or their proxies, but who shall not be directors of the Corporation or candidates for election as directors. In the event that the Board fails to so appoint one or more inspectors of stockholder votes or, in the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. The inspector or inspectors so appointed or designated shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (b) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (e) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by applicable law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law.

Section 1.12 Meetings.

(a) Annual Meetings of Stockholders.

(i) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only (A) as provided in that certain Investor Rights Agreement, dated as of [●], by and between the Corporation, Arena Investors Group Holdings, LLC and Wembley Group Partners, LP (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Investor Rights Agreement", a copy of which will be available to any stockholder upon request therefor), (B) pursuant to the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 1.3 of these By-Laws, (C) by or at the direction of the Board or any authorized committee thereof or (D) by any stockholder of the Corporation who is entitled to vote on such election or such other business at the meeting, who has complied with the notice procedures set forth in subparagraphs (ii) and (iii) of this Section 1.12(a) and who was a stockholder of record at the time such notice was delivered to the Secretary of the Corporation.

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 1.12(a)(i)(D) of these By-laws, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (even if such matter is already the subject of any notice to the stockholders or a public announcement from the Board), and, in the case of business other than nominations of persons for election to the Board, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120)

days 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 scheduled for more than thirty (30) days before, or more than seventy (70) days following, such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not later than the tenth day following the day on which public announcement of the date of such meeting is first made. For purposes of the application of Rule 14a-4(c) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") (or any successor provision), as applicable, the date for notice specified in this Section 1.12(a)(ii) shall be the earlier of the date calculated as hereinbefore provided or the date specified in paragraph (c)(1) of Rule 14a-4. For purposes of the first annual meeting of stockholders following the adoption of these By-Laws, the date of the preceding year's annual meeting shall be deemed to be [●] of the preceding calendar year.

Such stockholder's notice shall set forth (A) as to each person whom the stockholder proposes to nominate for election or re-election as a director (1) a completed director nominee questionnaire, which questionnaire shall be provided by the Corporation, within five days of any written request, to such stockholder, which shall include all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to, as applicable, Canadian securities laws and Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy circular or statement as a nominee and to serving as a director if elected, (2) stating whether such person is or may become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation or has received or may receive any compensation or other payment from any person or entity other than the Corporation, in each case in connection with candidacy, service or action as a director of the Corporation, (3) certifying that such person, if elected, will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines and any other policies and guidelines of the Corporation applicable to directors, as well as any applicable law, rule or regulation or listing requirement; (B) 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 text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest, direct or indirect, by way of ownership of securities or otherwise in such business of such stockholder and the beneficial owner, if different, on whose behalf the proposal is made; (C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (1) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (2) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (3) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business or nomination, (4) a representation whether the stockholder or the beneficial owner, if any, will be or is part of a group which will (a) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (b) otherwise solicit

proxies or votes from stockholders in support of such proposal or nomination, (5) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation, (6) if the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, a representation whether such stockholder intends or is part of a group which intends to solicit proxies or votes from stockholders in support of director nominees other than the Corporation's nominees or nomination in accordance with Rule 14a-19 under the Exchange Act, and if so, providing the information required to be provided pursuant to Rule 14a-19(b) under the Exchange Act and (7) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with, as applicable, Canadian securities laws, Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including the information required to be provided pursuant to Rule 14a-19 under the Exchange Act, if applicable; (D) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"); and (E) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) the intent or effect of which may be (1) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (2) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (3) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. A stockholder providing notice of a proposed nomination for election to the Board or other business proposed to be brought before a meeting (whether given pursuant to this Section 1.12(a)(ii) or Section 1.12(b)) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or any adjournment or postponement thereof)

and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such director under Canadian securities laws, the Exchange Act and rules and regulations thereunder and other applicable laws.

If the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, the foregoing notice requirements of Section 1.12(a)(ii) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder has complied with the requirements of such Rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 1.12(a)(ii) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

If the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, a stockholder and/or beneficial owner who has delivered a notice of nomination in accordance with Rule 14a-19 under the Exchange Act shall, not later than five (5) business days prior to the date of the applicable meeting of stockholders, deliver to the Corporation reasonable evidence that such stockholder and/or such beneficial owner has met and complied with all of the requirements of these By-Laws and of Rule 14a-19 under the Exchange Act. Notwithstanding anything to the contrary in these By-Laws, if the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act, unless otherwise required by applicable law, if (1) any stockholder or beneficial owner, if any, on whose behalf a nomination is made provides notice pursuant to Rule 14a-19(b) under the Exchange Act or includes the information required by Rule 14a-19(b) in a preliminary or definitive proxy statement previously filed by such person (it being understood that such notice or filing shall be in addition to, and not in lieu of, the notices required under these By-Laws) and (2) (A) such stockholder or beneficial owner subsequently either (i) notifies the Corporation that it no longer intends to solicit proxies in support of the election or reelection of such director nominee in accordance with Rule 14a-19(b) under the Exchange Act or (ii) fails to comply with the requirements of Rule 14a-19(a)(2) or Rule 14a-19(a)(3) under the Exchange Act (or fails to timely provide reasonable evidence sufficient to satisfy the Corporation that such stockholder or such beneficial owner has met the requirements of Rule 14a-19(a)(3) under the Exchange Act in accordance with the preceding sentence), then the nomination of each such proposed nominee shall be disregarded and no vote on the election of such proposed nominee shall occur, notwithstanding that such nomination is set forth in the notice of meeting or other proxy materials and notwithstanding that proxies in respect of the election of such proposed nominees may have been received by the Corporation.

(iii) Notwithstanding anything in the second sentence of Section 1.12(a)(ii) to the contrary, in the event that the number of directors to be elected to the Board is increased, effective after the time period for which nominations would otherwise be due

under Section 1.12(a)(ii), and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 1.12 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 a public announcement of such increase is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 1.3 of these By-Laws. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (i) by or at the direction of the Board or a committee thereof or (ii) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who has complied with the notice procedures set forth in this Section 1.12 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by Section 1.12(a)(ii) is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(c) General.

(i) Only persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible to be elected 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 1.12 and the Investor Rights Agreement. Except as otherwise provided by applicable law, the Certificate of Incorporation, these By-Laws or the Investor Rights Agreement, 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 in accordance with the procedures set forth in this Section 1.12 and, if any proposed nomination or business is not in compliance with this Section 1.12, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

Notwithstanding the foregoing provisions of this Section 1.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in

respect of such vote may have been received by the Corporation. For purposes of this Section 1.12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(ii) If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may, by means of remote communication participate in a meeting of stockholders of the Corporation and be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; *provided, however*, that (A) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder; (B) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (C) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(iii) For purposes of this Section 1.12, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service in Canada and/or the United States, as applicable, in a document publicly filed with or furnished by the Corporation to, as applicable, applicable securities regulatory authorities in Canada pursuant to Canadian securities laws and the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or otherwise disseminated in a manner constituting “public disclosure” under, as applicable, Canadian securities laws and Regulation FD promulgated by the Securities and Exchange Commission.

(iv) No adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice (or extend any notice time period) of such meeting for purposes of this Section 1.12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 1.12 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(v) Notwithstanding the foregoing provisions of this Section 1.12, a stockholder shall also comply with all applicable requirements of Canadian securities laws, the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 1.12; *provided, however*, that, to the fullest extent permitted by applicable law, any references in these By-Laws to Canadian securities laws or the Exchange Act or the rules and

regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 1.12 (including Section 1.12(a)(i)(D) and Section 1.12(b) hereof), and compliance with Section 1.12(a)(i)(D) and Section 1.12(b) shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in this Section 1.12 shall apply to the right, if any, of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Notwithstanding anything to the contrary contained herein, for as long as the Investor Rights Agreement remains in effect with respect to the Stockholder Party (as defined in the Certificate of Incorporation), such Stockholder Party (to the extent then subject to the Investor Rights Agreement) shall not be subject to the notice procedures set forth in Section 1.12(a)(ii), Section 1.12(a)(iii) or Section 1.12(b) with respect to any annual or special meeting of stockholders to the extent necessary to implement their rights set forth in the Investor Rights Agreement.

## ARTICLE II

### BOARD OF DIRECTORS

Section 2.1 General. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships and except as otherwise expressly provided in the Certificate of Incorporation) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors in accordance with the terms of applicable law, the Certificate of Incorporation and the Investor Rights Agreement, as applicable. A majority of the total number of directors then in office shall constitute a quorum for the transaction of business, except as provided otherwise in the Investor Rights Agreement. Except as otherwise provided by applicable law, these By-Laws, the Certificate of Incorporation or the Investor Rights Agreement, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 2.2 Filling Vacancies. Subject to the Certificate of Incorporation and the Investor Rights Agreement, unless otherwise required by the DGCL or Section 2.4 of these By-Laws, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, removal, retirement, disqualification or otherwise) shall be filled only by a majority of the directors then in office, although less than a quorum, by any authorized committee of the Board or by a sole remaining director.

Section 2.3 Meetings. Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings

may be held at any time upon the call of the Chairman of the Board, the Chief Executive Officer, or by a majority of the total number of directors then in office, by written notice, including facsimile, e-mail or other means of electronic transmission, duly served on or sent and delivered to each director in accordance with Section 10.2. Notice of each special meeting of the Board shall be given, as provided in Section 10.2, to each director (a) at least twenty-four (24) hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (b) at least two (2) days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (c) at least five (5) days before the meeting if such notice is sent through the United States mail. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director 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), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 2.4 Preferred Stock Representation. Notwithstanding the foregoing, whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, as applicable, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal, and other features of such directorships shall be governed by the terms of the Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock) applicable thereto. The number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the total number of directors fixed by the Board pursuant to the Certificate of Incorporation and these By-Laws. Except as otherwise expressly provided in the terms of such series, the number of directors that may be so elected by the holders of any such series of stock shall be elected for terms expiring at the next annual meeting of stockholders, and vacancies among directors so elected by the separate vote of the holders of any such series of Preferred Stock shall be filled by the affirmative vote of a majority of the remaining directors elected by such series, or, if there are no such remaining directors, by the holders of such series in the same manner in which such series initially elected a director.

Section 2.5 Committees. The Board may from time to time establish one or more committees of the Board to serve at the pleasure of the Board, which shall be comprised of such members of the Board, subject to the Investor Rights Agreement, and have such duties as the Board shall from time to time determine. Any director may belong to any number of committees of the Board. Subject to the Certificate of Incorporation and the Investor Rights Agreement, the Board 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. In the absence or disqualification of a member of a 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, subject to the Investor Rights Agreement. Unless otherwise

provided in the Certificate of Incorporation, these By-Laws or the resolution of the Board designating the committee, a committee may create one or more subcommittees, each subcommittee to consist of one or more members of the committee, and may delegate to a subcommittee any or all of the powers and authority of the committee.

Section 2.6 Written Action. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing (including by electronic transmission), and the writing or writings (including any electronic transmission or transmissions) are filed with the minutes of proceedings of the Board.

Section 2.7 Electronic Participation. The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, 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 pursuant to this subsection shall constitute presence in person at such a meeting.

Section 2.8 Compensation of Directors. The Board may establish policies for the compensation of directors and for the reimbursement of the expenses of directors, in each case, in connection with services provided by directors to the Corporation.

### **ARTICLE III**

#### **OFFICERS**

Section 3.1 Election. The Board shall elect officers of the Corporation, including a Chief Executive Officer, a President and a Secretary. The Board may also from time to time elect such other officers as it may deem proper or may delegate to any elected officer of the Corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior or Corporate, or may be given such other designation or combination of designations as the Board or the Chief Executive Officer may determine. Any two or more offices may be held by the same person. The Board may also elect or appoint a Chairman of the Board, who may or may not also be an officer of the Corporation. The Board may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these By-Laws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 3.2 Term. All officers of the Corporation elected by the Board shall hold office for such terms as may be determined by the Board or, except with respect to his or her own office, the Chief Executive Officer, or until their respective successors are chosen and qualified or until his or her earlier resignation or removal. Any officer may be removed from office at any time either with or without cause by the Board, or, in the case of appointed officers, by the Chief Executive Officer or any elected officer upon whom such power of removal shall have been conferred by the Board.

Section 3.3 Powers and Duties. Each of the officers of the Corporation elected by the Board or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board and, in the case of appointed officers, the powers and duties prescribed by the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

Section 3.4 Delegation. Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

## ARTICLE IV

### INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 4.1 Indemnification of Officers and Directors. Each person who was or is made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative or any other type whatsoever (hereinafter a "proceeding"), by reason of the fact that he or she is or was a director or an officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an "indemnitee"), whether the basis of such proceeding is alleged action in an official capacity as a director, officer, employee, agent or trustee or in any other capacity while serving as a director, officer, employee, agent or trustee, shall be indemnified and held harmless by the Corporation to the fullest extent permitted by Delaware law, as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such law permitted the Corporation to provide prior to such amendment), against all expense, liability and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred or suffered by such indemnitee in connection therewith; except as provided in Section 4.3 with respect to proceedings to enforce rights to indemnification or advancement of expenses or with respect to any compulsory counterclaim brought by such indemnitee, the Corporation shall indemnify any such indemnitee in connection with a proceeding (or part thereof) initiated by such indemnitee only if such proceeding (or part thereof) was authorized by the Board.

Section 4.2 Advance of Expenses. In addition to the right to indemnification conferred in Section 4.1, an indemnitee shall also have the right to be paid by the Corporation the expenses (including attorney's fees) incurred in appearing at, participating in or defending any such proceeding in advance of its final disposition or in connection with a proceeding brought to establish or enforce a right to indemnification or advancement of expenses under this Article IV (which shall be governed by Section 4.3) (hereinafter an "advancement of expenses"); *provided, however*, that, if (a) the DGCL requires or (b) in the case of an advance made in a proceeding

brought to establish or enforce a right to indemnification or advancement, an advancement of expenses incurred by an indemnitee 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 solely upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined after final judicial decision from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to indemnification under this Article IV or otherwise.

Section 4.3 Non-Exclusivity of Rights. If a claim under Section 4.1 or Section 4.2 is not paid in full by the Corporation within (a) sixty (60) days after a written claim for indemnification has been received by the Corporation or (b) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by applicable law, if the indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense of the Corporation that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IV or otherwise shall be on the Corporation.

#### Section 4.4 Rights of the Corporation.

(a) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article IV, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article IV, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by applicable law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or

disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(b) Given that certain jointly indemnifiable claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation or as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise at the request of the indemnitee-related entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such jointly indemnifiable claims, pursuant to and in accordance with the terms of this Article IV, irrespective of any right of recovery the indemnitee may have from the indemnitee-related entities. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by the indemnitee-related entities and no right of advancement, indemnification or recovery the indemnitee may have from the indemnitee-related entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation under this Article IV. In the event that any of the indemnitee-related entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the indemnitee-related entities effectively to bring suit to enforce such rights. Each of the indemnitee-related entities shall be third-party beneficiaries with respect to this Section 4.4(b), entitled to enforce this Section 4.4(b).

For purposes of this Section 4.4(b), the following terms shall have the following meanings:

(i) The term "indemnitee-related entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(ii) The term "jointly indemnifiable claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the indemnitee-related entities and the Corporation pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the indemnitee-related entities, as applicable.

Section 4.5 Continuation of Indemnification. The rights conferred upon indemnitees in this Article IV shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article IV that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 4.6 D&O Insurance. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 4.7 Indemnification of Employees or Agents. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this Article IV with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

## **ARTICLE V**

### **CORPORATE BOOKS**

The books of the Corporation may be kept inside or outside of the State of Delaware at such place or places as the Board may from time to time determine.

## **ARTICLE VI**

### **CHECKS, NOTES, PROXIES, ETC.**

All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board or such officer or officers who may be delegated such authority. Proxies to vote and consents with respect to securities of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or by such officers as the Chairman of the Board, Chief Executive Officer or the Board may from time to time determine.

## ARTICLE VII

### SHARES AND OTHER SECURITIES OF THE CORPORATION

Section 7.1 Certificated and Uncertificated Shares. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 7.2 Signatures. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two authorized officers of the Corporation, which authorized officers shall include, without limitation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 7.3 Lost, Destroyed or Wrongfully Taken Certificates.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by applicable law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 7.4 Transfer of Stock.

(a) Transfers of record of shares of stock of the Corporation shall be made only upon the books administered by or on behalf of the Corporation and only upon proper transfer instructions, including by Electronic Transmission, pursuant to the direction of the registered holder thereof, such person's attorney lawfully constituted in writing, or from an individual presenting proper evidence of succession, assignment or authority to transfer the shares of stock; or, in the case of stock represented by certificate(s) upon delivery of a properly

endorsed certificate(s) for a like number of shares or accompanied by a duly executed stock transfer power.

(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 7.5 Registered Stockholders. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 7.6 Regulations. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

## **ARTICLE VIII**

### **FISCAL YEAR**

The fiscal year of the Corporation shall end on December 31 of each calendar year, unless otherwise determined by resolution of the Board.

## **ARTICLE IX**

### **CORPORATE SEAL**

The corporate seal shall have inscribed thereon the name of the Corporation. In lieu of the corporate seal, when so authorized by the Board or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

## **ARTICLE X**

### **GENERAL PROVISIONS**

Section 10.1 Notice to Attendees. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting need not be given to any person who shall attend such meeting (except when the person 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), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 10.2 Means of Giving Notice. Except as otherwise set forth in any applicable law or any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting shall be given by the following means:

(a) Notice to Directors. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (A) if given by hand delivery, orally, or by telephone, when actually received by the director, (B) if sent through the United States or Canadian mail, when deposited in the United States or Canadian mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (C) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (D) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (E) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (F) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) Electronic Transmission. "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(c) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder's consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within sixty (60) days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(d) Exceptions to Notice Requirements.

(i) Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, 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 that 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 with the Secretary of State of Delaware, 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.

(ii) Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (A) notice of two consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two consecutive annual meetings, or (B) all, and at least two payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12) month period, have been mailed addressed to such stockholder at such stockholder's address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (A) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission.

Section 10.3 Interpretation. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 10.4 Certificate of Incorporation Governs. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation or the DGCL, the provision of these By-Laws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

## **ARTICLE XI**

### **AMENDMENT**

These By-Laws may be made, amended, altered, changed, added to or repealed as set forth in the Certificate of Incorporation.