

# Delaware

The First State

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*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF  
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT  
COPY OF THE RESTATED CERTIFICATE OF "NIGHTINGALE INTELLIGENT  
SYSTEMS, INC.", FILED IN THIS OFFICE ON THE NINTH DAY OF  
NOVEMBER, A.D. 2022, AT 1:12 O`CLOCK P.M.*

  
Jeffrey W. Bullock, Secretary of State

5543716 8100  
SR# 20223981647

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

Authentication: 204820863  
Date: 11-09-22

**SECOND AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION**

**OF**

**NIGHTINGALE INTELLIGENT SYSTEMS, INC.**

(Pursuant to Sections 242 and 245 of the  
General Corporation Law of the State of Delaware)

Nightingale Intelligent Systems, Inc., a corporation organized and existing under and by virtue of the provisions of the General Corporation Law of the State of Delaware,

**DOES HEREBY CERTIFY:**

1. That the name of this corporation is Nightingale Intelligent Systems, Inc. and that this corporation was originally incorporated pursuant to the General Corporation Law of the State of Delaware on June 13, 2014 under the name Nightingale Autonomous Systems, Inc.

2. That the Certificate of Amendment to Certificate of Incorporation of Nightingale Autonomous Systems, Inc. was filed with the Secretary of State of the State of Delaware on December 5, 2014 pursuant to the General Corporation Law of the State of Delaware.

3. That the Restated Certificate of Incorporation of Nightingale Intelligent Systems, Inc. was filed with the Secretary of State of the State of Delaware on October 19, 2017 pursuant to the General Corporation Law of the State of Delaware

4. That the Amended and Restated Certificate of Incorporation of Nightingale Intelligent Systems, Inc. was filed with the Secretary of State of the State of Delaware on July 31, 2020 pursuant to the General Corporation Law of the State of Delaware.

5. That the Board of Directors of Nightingale Intelligent Systems, Inc. (the “**Board of Directors**”) duly adopted resolutions proposing to further amend and restate the Certificate of Incorporation of this corporation, declaring said second amendment and restatement to be advisable and in the best interests of this corporation and its stockholders, and authorizing the appropriate officers of this corporation to solicit the consent of the stockholders therefor, which resolution setting forth the proposed second amendment and restatement is as follows:

**RESOLVED**, that the Amended and Restated Certificate of Incorporation of this corporation, be amended and restated in its entirety to read as follows:

**ARTICLE I**

The name of the corporation is Nightingale Intelligent Systems, Inc. (the “**Corporation**”).

## ARTICLE II

The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, Wilmington, New Castle County, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

## ARTICLE III

The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware (“DGCL”), as the same may be amended and supplemented from time to time.

## ARTICLE IV

The Corporation is authorized to issue two classes of stock to be designated Common Stock (“**Common Stock**”) and Common Prime Stock (“**Common Prime Stock**”). The total number of shares of all classes of stock which the Corporation shall have authority to issue is (a) 250,000,000 shares of Common Stock, \$0.00001 par value per share, and (b) 105,000,000 shares of Common Prime Stock, \$0.00001 par value per share.

The following is a statement of the designations and the rights, powers, preferences and privileges, and the qualifications, limitations or restrictions thereof, in respect of each class of capital stock of the Corporation.

### 1. *Common Stock.*

(a) *Voting.* The holders of Common Stock are entitled to one vote for each share of Common Stock held at all meetings of stockholders (and written actions in lieu of meetings), and shall be entitled to notice of any stockholders’ meeting in accordance with the Bylaws of this Corporation (the “**Bylaws**”), and shall be entitled to vote upon such matters and in such manner as may be provided by law. There shall be no cumulative voting. The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of capital stock of the Corporation representing a majority of the votes represented by all outstanding shares of Common Stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) *Dividend Rights.* The holders of the Common Stock shall be entitled to receive, when, as and if declared by the Board of Directors, out of any assets of this corporation legally available therefor, any dividends as may be declared from time to time by the Board of Directors.

(c) *Redemption.* The Common Stock is not redeemable.

(d) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction (as defined below), the assets of

the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock and Common Prime Stock pro rata based on the number of shares of Common Stock or Common Prime Stock held by each. For purposes of this ARTICLE IV, a “**Liquidation Transaction**” shall be deemed to occur if the Corporation shall (i) sell, convey, exclusively license or otherwise dispose of all or substantially all of its assets, property or business, (ii) merge with or into or consolidate with any other corporation, limited liability company or other entity (other than a wholly-owned subsidiary of the Corporation), or (iii) effect a liquidation, dissolution or winding up of the Corporation pursuant to the applicable provisions of Section 275 of the DGCL; *provided, however*, that none of the following shall be considered a Liquidation Transaction: (x) a merger effected exclusively for the purpose of changing the domicile of the Corporation, (y) a bona fide equity financing in which the Corporation is the surviving corporation or (z) a transaction in which the stockholders of the Corporation immediately prior to the transaction have sufficient rights (by law or contract) to elect or designate 50% or more of the directors of the surviving or acquiring entity following the transaction (as appropriately adjusted for any disparate director voting rights). Nothing in this ARTICLE IV shall require the distribution to stockholders of anything other than proceeds of such transaction in the event of a merger or consolidation of the Corporation.

## 2. *Common Prime Stock.*

(a) *Voting Rights.* Except as otherwise required by law, the holders of Common Prime Stock shall not be entitled to any voting rights or powers. The number of authorized shares of Common Prime Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of shares of stock of the Corporation representing a majority of the votes represented by all outstanding shares of stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the DGCL.

(b) *Dividend Rights.* The holders of Common Prime Stock shall not be entitled to share in any dividends or other distributions of cash, property or shares of the Corporation as may be declared by the Board of Directors on the Common Stock.

(c) *Redemption.* The Common Prime Stock is not redeemable.

(d) *Liquidation Rights.* In the event of any liquidation, dissolution or winding up of the Corporation, or the occurrence of a Liquidation Transaction, the assets of the Corporation available for distribution to stockholders shall be distributed among the holders of Common Stock and Common Prime Stock pro rata based on the number of shares of Common Stock or Common Prime Stock held by each.

(e) *Stock Split.* If the Corporation shall in any manner split, subdivide, or combine the outstanding shares of Common Stock, the outstanding shares of Common Prime Stock shall be proportionately split, subdivided, or combined in the same manner and on the same basis.

(f) *Merger or Consolidation.* In the event of any merger or consolidation to which the Corporation is a party (whether or not the Corporation is a surviving entity), the holders of Common Prime Stock shall be entitled to receive, on a per-share basis, the same amount and form of stock and other securities, property, and cash as the holders of Common Stock.

## ARTICLE V

In connection with the Corporation's initial public offering (the "**Offering**") of CHES Depositary Interests over the Corporation's Common Stock ("**CDIs**") (with each CDI representing an interest in one (1) share of Common Stock), certain stockholders entered into an escrow agreement (each an "**Escrow Agreement**") with the Corporation under which the stockholder agreed, among other things, to certain restrictions and prohibitions from engaging in transactions in the shares of Common Stock (including Common Stock in the form of CDIs) held or acquired by the stockholder (including shares of Common Stock that may be acquired upon exercise of a stock option, warrant or other right) or shares of Common Stock which attach to or arise from such Common Stock (collectively, the "**Restricted Securities**") for a period of time identified in the Escrow Agreement (the "**Lock-Up Period**"). The Restricted Securities shall automatically and without further action be converted into shares of Common Prime Stock, on a one-for-one basis, if the Corporation determines, in its sole discretion, that the stockholder breached or violated any term of such stockholder's Escrow Agreement, or breached the official Listing Rules of ASX Limited ABN 98 008 624 691 (the "**ASX**"), or the securities market it operates (the "**Listing Rules**"). Any shares of Common Stock converted to Common Prime Stock pursuant to this ARTICLE V shall automatically and without further action be converted back into shares of Common Stock, on a one-for-one basis, upon the earlier to occur of (a) the expiration of the Lock-Up Period in the applicable Escrow Agreement pursuant to which the shares of Common Stock were originally converted to Common Prime Stock or (b) the breach of the Listing Rules being remedied, as applicable.

## ARTICLE VI

The Corporation is to have perpetual existence.

## ARTICLE VII

Except as otherwise provided in this Certificate, in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws.

## ARTICLE VIII

The number of directors which shall constitute the whole Board of Directors shall be fixed by the Board of Directors in the manner provided in the Bylaws.

## ARTICLE IX

The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "**Excluded Opportunity**" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of capital stock of the Corporation or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively,

**“Covered Persons”**), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, a Covered Person expressly and solely in such Covered Person’s capacity as a director of the Corporation.

## ARTICLE X

The directors shall be divided, with respect to the time for which they severally hold office, into three classes designated as Class I, Class II and Class III, respectively (the **“Classified Board of Directors”**). The Board of Directors is authorized to assign members of the Board of Directors already in office to such classes of the Classified Board of Directors, which assignments shall become effective at the same time the Classified Board of Directors becomes effective. Directors shall be assigned to each class in accordance with a resolution or resolutions adopted by the Board of Directors, with the number of directors in each class to be divided as nearly equal as reasonably possible. The initial term of office of the Class I directors shall expire at the Corporation’s first annual meeting of stockholders following the closing of the Offering (the **“Offering Closing”**), the initial term of office of the Class II directors shall expire at the Corporation’s second annual meeting of stockholders following the Offering Closing, and the initial term of office of the Class III directors shall expire at the Corporation’s third annual meeting of stockholders following the Offering Closing. At each annual meeting of stockholders following the Offering Closing, directors elected to succeed those directors of the class whose terms then expire shall be elected for a term of office to expire at the third succeeding annual meeting of stockholders after their election. In the event of any increase or decrease in the authorized number of directors (a) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member and (b) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of directors so as to ensure that no one class has more than one director more than any other class.

## ARTICLE XI

Each director shall hold office until the annual meeting at which such director’s term expires and until such director’s successor is elected and qualified, or until such director’s earlier death, resignation, disqualification or removal. Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission permitted by the Bylaws. No director may be removed from the Board of Directors except for cause and only by the affirmative vote of the holders of at least two-thirds (2/3) of the voting power of the then-outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class. In the event of any increase or decrease in the authorized number of directors, (a) each director then serving as such shall nevertheless continue as a director of the class of which he or she is a member and (b) the newly created or eliminated directorships resulting from such increase or decrease shall be apportioned by the Board of Directors among the classes of directors so as to ensure that no one class has more than one director more than any other class. To the extent possible, consistent with the foregoing rule, any newly created directorships shall be added to those classes whose terms of office are to expire at the latest dates following such allocation, and any newly eliminated directorships shall be subtracted from those classes whose terms of office are to expire at the earliest dates following such allocation, unless otherwise provided from time to time by resolution adopted by the Board of Directors. No decrease in the

authorized number of directors constituting the Board of Directors shall shorten the term of any incumbent director.

## ARTICLE XII

Any vacancy occurring in the Board of Directors for any cause, and any newly created directorship resulting from any increase in the authorized number of directors, shall, unless (a) the Board of Directors determines by resolution that any such vacancies or newly created directorships shall be filled by the stockholders or (b) as otherwise provided by law, be filled only 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 in accordance with the preceding sentence shall hold office for a term expiring at the annual meeting of stockholders at which the term of office of the class to which the director has been assigned expires or until such director's successor shall have been duly elected and qualified.

## ARTICLE XIII

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

## ARTICLE XIV

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

## ARTICLE XV

The following indemnification provisions shall apply to the persons enumerated below:

1. ***Indemnification of Directors.*** To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended from time to time, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

2. ***Right to Indemnification of Directors and Officers.*** The Corporation shall indemnify, to the fullest extent permitted by applicable law, any director or officer of the Corporation who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such

person in connection with any such Proceeding. The Corporation shall be required to indemnify a person in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors.

3. ***Indemnification of Employees and Agents.*** The Corporation shall have the power to indemnify, to the extent permitted by applicable law, any employee or agent of the Corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact that he or she is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with any such Proceeding.

4. ***Repeal or Modification.*** Neither any amendment nor repeal of any Section of this ARTICLE XV, nor the adoption of any provision of this Certificate of Incorporation or the Bylaws inconsistent with this ARTICLE XV, shall eliminate or reduce the effect of this ARTICLE XV in respect of any matter occurring, or any cause of action, suit, claim or proceeding accruing or arising or that, but for this ARTICLE XV, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision.

## **ARTICLE XVI**

Unless the Corporation consents in writing to the selection of an alternative forum and to the fullest extent permitted by law, the Court of Chancery of the State of Delaware (or, if such court lacks jurisdiction, any other state or federal court located within the State of Delaware) shall be the sole and exclusive forum for (A) any derivative action or proceeding brought on behalf of the Corporation, (B) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (C) any action or proceeding asserting a claim arising pursuant to any provision of the DGCL or the Corporation's Certificate of Incorporation or Bylaws, or (D) any action or proceeding asserting a claim governed by the internal affairs doctrine; in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants.

## **ARTICLE XVII**

For purposes of Section 500 of the California Corporations Code (to the extent applicable), in connection with any repurchase of shares of Common Stock permitted under this Certificate from employees, officers, directors or consultants of the Corporation in connection with a termination of employment or services pursuant to agreements or arrangements approved by the Board of Directors (in addition to any other consent required under this Certificate), such repurchase may be made without regard to any "preferential dividends arrears amount" or "preferential rights amount" (as those terms are defined in Section 500 of the California Corporations Code). Accordingly, for purposes of making any calculation under California Corporations Code Section 500 in connection with such repurchase, the amount of any



“preferential dividends arrears amount” or “preferential rights amount” (as those terms are defined therein) shall be deemed to be zero.

## ARTICLE XVIII

Notwithstanding anything herein to the contrary, until the Corporation being removed from the official list of the ASX and the Corporation’s CDIs ceasing to be quoted and traded on the ASX market, the Corporation shall not, without first obtaining a resolution passed by at least eighty percent (80%) of the votes cast by holders of then outstanding shares of Common Stock entitled to vote on the resolution:

(a) vary, amend, substitute, waive or cancel any rights attached to any class of stock of the Corporation;

(b) authorize, create or issue any class of shares of the Corporation other than the Common Stock and the Common Prime Stock;

(c) authorize the conversion of shares of Common Stock into any class of preferred stock of the Corporation;

(d) authorize the selective reduction of the Corporation’s Common Stock or Common Prime Stock;

(e) authorize the selective repurchase of the Corporation’s Common Stock or Common Prime Stock;

(f) subject to applicable laws, authorize or effect the involuntary liquidation, dissolution or winding up of the Corporation;

(g) authorize or effect the voluntary liquidation, dissolution or winding up of the business of the Corporation;

(h) authorize or effect the sale of all or substantially all of the Corporation’s assets or any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation) which would result in the holders of the outstanding voting power of the Corporation immediately prior to such transaction holding less than 50% of the voting power of the surviving entity immediately following such transaction;

(i) authorize or effect the removal of any director of the Corporation;

(j) where shareholder approval is required by ASX under Chapter 11 of the ASX Listing Rules, authorize or effect a significant change to the nature or scale of the Corporation’s activities or dispose of a major asset;

(k) alter, amend, repeal, substitute or waive any provision of the Corporation’s Third Amended and Restated Certificate of Incorporation or these Bylaws, so as to materially adversely affect the voting powers or other material rights, including, without limitation, dividend rights or liquidation rights of the Common Stock; and

(l) authorize or effect the removal of the Corporation from the official list of the ASX, except in circumstances where the Corporation's securities are traded on another recognized stock exchange or in the context of a change of control or a "going private" transaction.

\* \* \*

1. That the foregoing amendment and restatement was approved by the holders of the requisite number of shares of this Corporation in accordance with Section 228 of the DGCL.

2. That this Second Amended and Restated Certificate of Incorporation, which restates and integrates and further amends the provisions of this Corporation's Amended and Restated Certificate of Incorporation, has been duly adopted in accordance with Sections 242 and 245 of the DGCL.

**IN WITNESS WHEREOF**, this Second Amended and Restated Certificate of Incorporation has been executed by a duly authorized officer of this Corporation on this 9th day of November, 2022.

By:  \_\_\_\_\_  
Jack Wu  
President and CEO