
**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

**CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): November 4, 2014

MITEK SYSTEMS, INC.

(Exact Name of Registrant as Specified in its Charter)

Delaware
(State or other jurisdiction
of incorporation)

001-35231
Commission file number

87-0418827
(I.R.S. Employer
identification number)

8911 Balboa Ave., Suite B, San Diego, California 92123
(Address of principal executive offices) (Zip Code)

Registrant's telephone number, including area code: (858) 309-1700

N/A
(Former name, or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

Resignation of Director and Appointment of New Director

On November 4, 2014, Sally Thornton informed Mitek Systems, Inc. (the “Company”) of her decision to resign from the Board of Directors of the Company (the “Board”), effective as of such date. Mrs. Thornton’s resignation, which marks her retirement from the Board after 28 years of distinguished service, did not involve any disagreement with the other Board members or with management.

Effective November 4, 2014, James Hale was appointed to the Board to fill the vacancy created by Mrs. Thornton’s resignation. Concurrently with his appointment to the Board, Mr. Hale was also appointed to the Audit Committee of the Board (the “Audit Committee”). Mr. Hale served as a member of the Company’s Advisory Board since 2012. He co-founded FTV Capital and has significant experience in advising high-growth technology companies. In connection with his appointment to the Board, Mr. Hale was granted an option to purchase 40,000 shares of Company common stock which vest on the one year anniversary of the date of grant. As a non-employee director, Mr. Hale will be entitled to receive the Company’s standard fees for his service as a member of the Board.

Effective as of Mr. Hale’s appointment to the Audit Committee, Gerald Farmer, a current member of the Board, was removed from the Audit Committee. Mr. Farmer will continue to serve as Chairman of the Nominating and Corporate Governance Committee of the Board and as a member of the Compensation Committee of the Board.

The Company intends to enter into its standard form of indemnification agreement with Mr. Hale, a copy of which was filed as Exhibit 10.1 to the Company’s Form 8-K filed with the Securities and Exchange Commission on March 1, 2011 and is incorporated herein by reference.

Adoption of Bonus Program

On November 4, 2014, the Board, based upon the recommendation of the Compensation Committee of the Board, approved the Company’s executive bonus program for the fiscal year ending September 30, 2015 (the “2015 Plan”). Pursuant to the terms of the 2015 Plan, certain of the Company’s executives will be eligible to receive cash bonuses based upon the achievement of certain corporate and individual performance goals during the 2015 fiscal year. These bonuses are designed to attract, motivate, retain and reward the Company’s executives.

Under the 2015 Plan, the Chief Executive Officer (“CEO”) of the Company has a bonus target equal to 80% of his annualized salary and the Chief Financial Officer (“CFO”) of the Company has a bonus target equal to 50% of his annualized salary. Up to 75% of the bonus target for both the CEO and CFO is based upon achievement of two financial metrics (revenue and non-GAAP net income) and the remaining 25% of the bonus target is based upon achievement of certain individual performance goals. The maximum bonus payable to the Company’s CEO and CFO is 150% of their respective bonus targets.

The foregoing description of the 2015 Plan does not purport to be complete and is qualified in its entirety by reference to the full text of the 2015 Plan, a copy of which is attached as Exhibit 10.1 to this Form 8-K and is incorporated herein by reference.

Item 5.03. Amendments to Articles of Incorporation or Bylaws; Change in Fiscal Year.

On November 4, 2014, the Board adopted the Second Amended and Restated Bylaws of the Company (the “New Bylaws”), effective as of such date. The New Bylaws are intended primarily to update the Company’s prior bylaws (the “Prior Bylaws”) to reflect statutory and case law developments since the Prior Bylaws were adopted and to include provisions commonly found in the bylaws of public Delaware corporations similar to the Company. The New Bylaws also reflect certain non-substantive changes that were made to improve style and readability. Set forth below is a summary of the material amendments contained in the New Bylaws.

Notice of Stockholders' Meeting

Article II, Section 3 of the New Bylaws provides that stockholders shall be given notice of a stockholders' meeting not less than 10 days and not more than 60 days prior to the date of the meeting, which is consistent with current Delaware law. The Prior Bylaws provided that stockholders would be given notice of a stockholders' meeting not less than 10 nor more than 30 days prior to the date of the meeting.

Advance Notice Provisions

Article II, Sections 5 through 7 of the New Bylaws (the "Advance Notice Provisions") describe the manner in which a stockholder of the Company may properly bring business before, or nominate any person for election to the Board at, an annual or special meeting of stockholders. The Advance Notice Provisions set forth the various eligibility requirements that must be met by (a) any stockholder who wishes to bring such business before an annual or special meeting of stockholders and (b) any nominee for election to the Board. The Advance Notice Provisions also describe the substantive and procedural requirements that a stockholder must comply with in order to properly bring business, including nomination of any person for election to the Board, before an annual or special meeting.

Among other requirements, the Advance Notice Bylaws provide that (a) a stockholder must provide to the secretary of the Company timely notice (generally 90-120 days prior to the one-year anniversary of the previous year's annual meeting of stockholders) of any business, including director nominations, proposed to be brought before the annual or special meeting, which notice must conform to the substantive requirements set forth in the New Bylaws, (b) a stockholder must deliver certain information regarding the person(s) making the proposal, and in the case of any nominee for election to the Board, information regarding such nominee, in each case as set forth in the New Bylaws, (c) any nominee for election to the Board must provide both an executed questionnaire regarding his or her background, qualifications, stock ownership and independence, and an executed representation agreement regarding voting commitments, indemnification or similar arrangements and compliance with Company policies applicable to members of the Board, and (d) in order to call a special meeting of stockholders, the Secretary of the Company must receive one or more written demands to call a special meeting, in accordance with the substantive requirements set forth in the New Bylaws, from stockholders holding not less than an aggregate of 25% of the Company's outstanding shares, which percentage was increased from the 10% aggregate share ownership required by the Prior Bylaws.

The Prior Bylaws did not contain advance notice procedures for the Company's stockholders to bring business before, or nominate persons for election to the Board at, annual or special meetings of stockholders.

Stockholder Action by Written Consent

Article II, Section 10 of the New Bylaws updates and clarifies the procedural and substantive requirements applicable to stockholder actions by written consent. Among other requirements, the New Bylaws provide that a stockholder of record seeking to have the Company's stockholders take action by written consent must submit a written request that the Board fix a record date for determining the stockholders entitled to act by written consent, which request must conform to the substantive requirements set forth in the New Bylaws.

Number of Directors

Article III, Section 2 of the New Bylaws gives the Board the exclusive authority to fix by resolution the number of directors of the Company, within the limits specified in the New Bylaws, which limits remain unchanged from the Prior Bylaws. The Prior Bylaws provided that the number of directors could be fixed by resolution of the Board or by the Company's stockholders at an annual meeting of stockholders.

Exclusive Forum

Article IX of the New Bylaws designates the state or federal courts located within the state of Delaware, subject to such courts having personal jurisdiction over the parties named as defendants, as the exclusive forum for stockholder derivative actions or actions asserting (i) claims of breach of fiduciary duty, (ii) claims under Delaware law or (iii) claims governed by the internal affairs doctrine. The Prior Bylaws did not contain a forum selection provision.

The foregoing description of the New Bylaws does not purport to be complete and is qualified in its entirety by reference to the full text of the New Bylaws, a copy of which is attached as Exhibit 3.1 to this Form 8-K and is incorporated herein by reference.

Item 8.01. Other Events.

On November 5, 2014, the Company issued a press release announcing the recent appointment of Mr. Hale to the Board. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits

- 3.1 Second Amended and Restated Bylaws of Mitek Systems, Inc.
- 10.1 Executive Bonus Program Fiscal Year 2015
- 99.1 Press Release issued on November 5, 2014.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Mitek Systems, Inc.

By: /s/ James B. DeBello

James B. DeBello

President and Chief Executive Officer

Date: November 10, 2014

**SECOND AMENDED AND RESTATED
BYLAWS**

OF

MITEK SYSTEMS, INC.

(Effective November 4, 2014)

TABLE OF CONTENTS

	Page	
ARTICLE I	OFFICES	1
Section 1.	Registered Office	1
Section 2.	Other Offices	1
ARTICLE II	MEETINGS OF STOCKHOLDERS	1
Section 1.	Place of Meetings	1
Section 2.	Annual Meetings	1
Section 3.	Notice of Stockholders' Meetings	1
Section 4.	Manner of Giving Notice; Affidavit of Notice; Waiver	1
Section 5.	Advance Notice Provisions for Stockholder Proposals	2
Section 6.	Advance Notice Provisions for Nominations of Directors	7
Section 7.	Special Meetings of Stockholders	10
Section 8.	Quorum and Adjournment	14
Section 9.	Voting	14
Section 10.	Stockholder Action by Written Consent	15
Section 11.	Record Date	17
Section 12.	Proxies and Voting	18
Section 13.	List of Stockholders Entitled to Vote	18
ARTICLE III	DIRECTORS	18
Section 1.	Powers	18
Section 2.	Number of Directors	18
Section 3.	Election, Qualification, and Term of Office of Directors	19
Section 4.	Resignations and Vacancies	19
Section 5.	Place of Meetings; Meetings by Telephone	19
Section 6.	Regular Meetings	20
Section 7.	Special Meetings	20
Section 8.	Quorum	20
Section 9.	Board Action by Written Consent Without a Meeting	20
Section 10.	Fees and Compensation of Directors	20
Section 11.	Removal of Directors	20
Section 12.	Waivers	20
ARTICLE IV	COMMITTEES OF DIRECTORS	21

TABLE OF CONTENTS
(continued)

	Page
Section 1. Committees of Directors	21
Section 2. Committee Minutes	21
Section 3. Meetings and Action of Committees	21
ARTICLE V OFFICERS	21
Section 1. Officers	21
Section 2. Appointment of Officers	22
Section 3. Subordinate Officers	22
Section 4. Removal and Resignation of Officers	22
Section 5. Vacancies in Offices	22
Section 6. Chairman of the Board	22
Section 7. Chief Executive Officer	22
Section 8. President	22
Section 9. Chief Financial Officer	23
Section 10. Vice President	23
Section 11. Secretary and Assistant Secretary	23
Section 12. Treasurer and Assistant Treasurer	23
ARTICLE VI STOCK	24
Section 1. Certificates for Shares; Uncertificated Shares	24
Section 2. Lost Certificates	24
Section 3. Transfers of Stock	24
Section 4. Registered Stockholders	25
ARTICLE VII GENERAL PROVISIONS	25
Section 1. Dividends	25
Section 2. Annual Statement	25
Section 3. Checks	25
Section 4. Fiscal Year	25
Section 5. Seal	25
ARTICLE VIII INDEMNIFICATION	26
Section 1. Right to Indemnification	26
Section 2. Actions by the Corporation	26

TABLE OF CONTENTS
(continued)

	Page
Section 3. Continuation of Indemnification	26
Section 4. Right to Advancement of Expenses	27
Section 5. Board Authorization	27
Section 6. Non-Exclusivity of Rights	27
Section 7. Insurance	27
Section 8. Other Indemnification	27
Section 9. Nature of Rights	27
Section 10. Saving Clause	28
ARTICLE IX FORUM FOR ADJUDICATION OF DISPUTES	28
ARTICLE X AMENDMENTS	28

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of Mitek Systems, Inc. (the “**Corporation**”) shall be in the State of Delaware and shall be at such address as shall be set forth in the Certificate of Incorporation of the Corporation (as the same may be amended from time to time, including by any certificate of designation, the “**Certificate of Incorporation**”).

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the “**Board**”) may from time to time designate or the business of the Corporation may require.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 1. Place of Meetings. Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board and stated in the notice of the meeting. In the absence of any such designation, stockholders’ meetings shall be held at the registered office of the Corporation. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication, as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the “**DGCL**”).

Section 2. Annual Meetings. The annual meeting of stockholders shall be held on such day and at such time as may be designated by the Board for the purpose of electing directors and for the transaction of such other business as properly may come before such meeting.

Section 3. Notice of Stockholders’ Meetings. Except as otherwise provided by law, notice of each meeting of stockholders, whether annual or special, shall be given not less than ten (10) days nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notices of all meetings shall state the place, if any, date and time of the meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting. The notice of a special meeting shall state, in addition, the purpose or purposes for which the meeting is called.

Section 4. Manner of Giving Notice; Affidavit of Notice; Waiver.

(a) If mailed, notice to stockholders shall be deemed given when deposited in the United States 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 notice otherwise may be given effectively to stockholders, any notice to stockholders may be given by facsimile, telegraph, telex, or by electronic transmission in the manner provided in Section 232 of the DGCL. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws 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. 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 single notice, shall be deemed to have consented to receiving such single written notice. Any such consent shall be revocable by the stockholder by written notice to the Corporation.

(b) An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

(c) A written waiver of any notice, signed by a stockholder entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

Section 5. Advance Notice Provisions for Stockholder Proposals.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (i) specified in the notice of meeting (or any supplement or amendment thereto) given by or at the direction of the Board, (ii) if not specified in a notice of meeting, otherwise brought before the meeting by or at the direction of the Board or any committee thereof, or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 5 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 5 as to such business. The only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 7 of this Article II. Stockholders seeking to nominate persons for election to the Board must comply with Section 6 of this Article II, and this Section 5 shall not be applicable to nominations except as expressly provided in Section 6 of this Article II.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the secretary of the Corporation, (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 5 and (iii) constitute a proper matter for stockholder action. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day nor earlier than the one hundred twentieth (120th) day prior to the one (1)-year anniversary of the preceding year's annual meeting; *provided, however*, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "*Timely Notice*"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 5, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "**Exchange Act**") by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "**Stockholder Information**");

(ii) As to each Proposing Person:

(A) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class or series of shares of the Corporation or with a value derived in whole or in part from the value of any class or series of shares of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (a "**Derivative Instrument**"), directly or indirectly, owned beneficially by each such party, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the Corporation;

(B) any proxy, agreement, arrangement, understanding, or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any security of any class or series of the Corporation;

(C) any short interest in any security of the Company held by such Proposing Person (for purposes of this Section 5(c) a Proposing Person shall be deemed to have a short interest in a security if such person, directly or indirectly, through any agreement, arrangement, understanding, relationship or otherwise, has the opportunity to profit or share in any profit derived from any decrease in the value of the subject security) ("**Short Interests**");

(D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation;

(E) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which either party is a general partner or, directly or indirectly, beneficially owns an interest in a general partner;

(F) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Derivative Instruments or Short Interests, if any, in each case with respect to clauses (A) through (F) herein as of the close of business on the date of such notice, including without limitation any such interests held by members of each such Proposing Person's immediate family sharing the same household;

(G) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation; and

(H) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (G) and this clause (H) are referred to as "**Disclosable Interests**"); *provided, however*, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company, or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner;

(iii) As to each Proposing Person, (A) a representation that the stockholder is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business and (B) a representation whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (2) otherwise to solicit proxies or votes from stockholders in support of such proposal; and

(iv) As to each item of business that the stockholder proposes to bring before the annual meeting, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any direct or indirect material interest in such business of each Proposing Person, (B) 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 the Bylaws of the Corporation and the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements, and understandings (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder, and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act.

For purposes of this Section 5, the term **“Proposing Person”** shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder in such solicitation or associate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) of such stockholder or beneficial owner, and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert (as defined below).

A person shall be deemed to be **“Acting in Concert”** with another person for purposes of these Bylaws if such person knowingly acts (whether or not pursuant to an express agreement, arrangement, or understanding) in concert with, or towards a common goal relating to the management, governance, or control of the Corporation in parallel with, such other person where (A) each person is conscious of the other person’s conduct or intent and this awareness is an element in their decision-making processes and (B) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions, or making or soliciting invitations to act in concert or in parallel; provided, that a person shall not be deemed to be Acting in Concert with any other person solely as a result of the solicitation or receipt of revocable proxies or consents from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy or consent solicitation statement filed on Schedule 14A. A person Acting in Concert with another person shall be deemed to be Acting in Concert with any third party who is also Acting in Concert with such other person.

(d) A stockholder providing notice of business proposed to be brought before an annual meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 5 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(e) The foregoing notice requirements of this Section 5 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her, or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting.

(f) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no business shall be conducted at an annual meeting except in accordance with this Section 5. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty, if the facts warrant, (i) to determine whether business was properly brought before the meeting in accordance with this Section 5 (including whether the Proposing Person solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such Proposing Person's proposal in compliance with such Proposing Person's representation as required by clause (c)(iii)(B) of this Section 5), and (ii) if he or she should so determine that the business was not proposed in compliance with this Section 5, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. Notwithstanding the foregoing provisions of this Section 5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting of stockholders of the Corporation to present the proposed business, 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 these Bylaws, 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.

(g) Notwithstanding the foregoing provisions of this Section 5 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to any such business proposals; provided, however, that references in these Bylaws to the Exchange Act, or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements of these Bylaws applicable to proposals or any other business to be considered pursuant to this Section 5 (including paragraphs (a)(iii) and (b) of this Section 5), and compliance with paragraphs (a)(iii) and (b) of this Section 5 shall be the exclusive means for a stockholder to submit other business (other than, as provided in paragraph (e) of this Section 5, business other than nominations brought properly under and in compliance with Rule 14a-8 of the Exchange Act, as may be amended from time to time). Nothing in this Section 5 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act.

(h) For purposes of these Bylaws, "**public disclosure**" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press, or other national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Sections 13, 14, or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

Section 6. Advance Notice Provisions for Nominations of Directors.

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board, including by any committee or persons authorized to do so by the Board, (ii) pursuant to the Corporation's notice of meeting (or any supplement or amendment thereto), or (iii) by a stockholder who (A) was a stockholder of record of the Corporation both at the time of giving the notice provided for in this Section 6 and at the time of the meeting, (B) is entitled to vote at the meeting, and (C) has complied with this Section 6 as to such nomination.

(b) Without qualification:

(i) For a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting, the stockholder must (A) provide Timely Notice (as defined in Section 5(b) of this Article II) thereof in writing and in proper form to the secretary of the Corporation and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 6.

(ii) If the election of directors is a matter specified in the notice of a special meeting given by or at the direction of the person calling a special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (A) provide timely notice thereof in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation and (B) provide any updates or supplements to such notice at the times and in the forms required by this Section 6. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 5(h) of this Article II) of the date of such special meeting and of the nominees proposed by the Board to be elected at such meeting was first made.

(c) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(d) To be in proper form for purposes of this Section 6, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 6 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 6 the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the election of directors at the meeting);

(iii) As to each Nominating Person, the information required to be disclosed pursuant to Section 5(c)(iii) of this Article II, except that for purposes of this Section 6, the term “Nominating Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(iii) of this Article II and the references to “proposal” or “business” shall be deemed to be reference to “nomination”; and

(iv) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee that would be required to be set forth in a stockholder’s notice pursuant to this Section 6 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including such proposed nominee’s written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material agreements, arrangements, and understandings during the past three (3) years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective associates or any other participants in such solicitation, and any other persons with whom such proposed nominee (or any of his or her respective associates or other participants in such solicitation) is Acting in Concert, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the “registrant” for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, and (D) a completed and signed questionnaire, representation, and agreement as provided in Section 6(h) below (the disclosures and documents to be made or provided pursuant to the foregoing clauses (A) through (D) are referred to as “**Nominee Information**”).

For purposes of this Section 6, the term “**Nominating Person**” shall mean (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (c) any participant with such stockholder in such solicitation or associate of such stockholder or beneficial owner, and (d) any other person with whom such stockholder or such beneficial owner (or any of their respective associates or other participants in such solicitation) is Acting in Concert.

(e) The Corporation may require any proposed nominee to furnish such other information (i) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation or (ii) that could be material to a reasonable stockholder’s understanding of the independence or lack of independence of such proposed nominee.

(f) A stockholder providing notice of any nomination proposed to be made at an annual or special meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 6 shall be true and correct as of the record date for the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(g) Except as otherwise expressly provided in any applicable rule or regulation promulgated under the Exchange Act, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with this Section 6. Except as otherwise provided by law, the chairperson of the meeting shall have the power and duty, if the facts warrant, (i) to determine whether a nomination was properly made in accordance with this Section 6 (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies or votes in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by clause (c)(iii) of this Section 6), and (ii) if he or she should so determine that any proposed nomination was not made in compliance with this Section 6, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 6, unless otherwise required by law, 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, such nomination shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(h) To be eligible to be a nominee for election as a director of the Corporation, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 6) to the secretary of the Corporation at the principal executive offices of the Corporation a written questionnaire with respect to the background, qualifications, stock ownership, and independence of such proposed nominee (which questionnaire shall be provided by the secretary of the Corporation upon written request) and a written representation and agreement (in the form provided by the secretary of the Corporation upon written request) that such proposed nominee (i) is not and, if elected as a director, will not, during his or her term, become a party to (A) any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a "**Voting Commitment**") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee's ability to comply, if elected as a director of the Corporation, with such proposed nominee's fiduciary duties under applicable law, (ii) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation, and (iii) in such proposed nominee's individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected to a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines of the Corporation.

(i) Notwithstanding anything in this Section 6 to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased effective after the time period for which nominations would otherwise be due under Section 6(b) and there is no public disclosure by the Corporation naming the nominees for the additional directorships 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 6 shall also be considered timely, but only with respect to nominees for the additional directorships, 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 (10th) day following the day on which such public disclosure is first made by the Corporation.

(j) In addition to the requirements of this Section 6 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act and the rules and regulations promulgated thereunder with respect to any such nominations; provided, however, that references in these Bylaws to the Exchange Act, or the rules and regulations promulgated thereunder are not intended to and shall not limit the requirements of these Bylaws applicable to nominations to be considered pursuant to these Bylaws (including paragraphs (a)(iii) and (b) of this Section 6), and compliance with paragraphs (a)(iii) and (b) of this Section 6 shall be the exclusive means for a stockholder to make nominations. Nothing in this Section 6 shall be deemed to affect any rights (i) of stockholders to request inclusion of nominations in the Corporation's proxy statement pursuant to applicable rules and regulations promulgated under the Exchange Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 7. Special Meetings of Stockholders.

(a) Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called only by (i) the chairman of the board or the president, (ii) the chairman of the board, the president, or the secretary, pursuant to a resolution approved by a majority of the entire Board, or (iii) by the secretary of the Corporation, following his or her receipt of one or more written demands to call a special meeting of stockholders in accordance with, and subject to, this Section 7 from stockholders of record as of the record date fixed in accordance with Section 7(d) of this Article II who hold, in the aggregate, not less than twenty-five percent (25%) of the voting power of the outstanding shares of the Corporation. Except in accordance with this Section 7, stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders. Stockholders who nominate persons for election to the Board at a special meeting must also comply with the requirements set forth in Section 6 of this Article II.

(b) No stockholder may demand that the secretary of the Corporation call a special meeting of the stockholders pursuant to Section 7(a) of this Article II unless a stockholder of record has first submitted a request in writing that the Board fix a record date (a “**Demand Record Date**”) for the purpose of determining the stockholders entitled to demand that the secretary of the Corporation call such special meeting, which request shall be in proper form and delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation.

(c) To be in proper form for purposes of this Section 7, a request by a stockholder for the Board to fix a Demand Record Date shall set forth:

(i) As to each Requesting Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 7 the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Requesting Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 7 the term “Requesting Person” shall be substituted for the term “Proposing Person” in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the business proposed to be conducted at the special meeting or the proposed election of directors at the special meeting, as the case may be);

(iii) As to the purpose or purposes of the special meeting, (A) a reasonably brief description of the purpose or purposes of the special meeting and the business proposed to be conducted at the special meeting, the reasons for conducting such business at the special meeting and any direct or indirect material interest in such business of each Requesting Person, and (B) a reasonably detailed description of all agreements, arrangements, and understandings (x) between or among any of the Requesting Persons or (y) between or among any Requesting Person and any other person or entity (including their names) in connection with the request for the special meeting or the business proposed to be conducted at the special meeting; and

(iv) If directors are proposed to be elected at the special meeting, the Nominee Information for each person whom a Requesting Person expects to nominate for election as a director at the special meeting.

(v) For purposes of this Section 7(c), the term “**Requesting Person**” shall mean (i) the stockholder making the request to fix a Demand Record Date for the purpose of determining the stockholders entitled to demand that the secretary call a special meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf such request is made, and (iii) any affiliate or associate of such stockholder or beneficial owner.

(d) Within ten (10) days after receipt of a request to fix a Demand Record Date in proper form and otherwise in compliance with this Section 7 from any stockholder of record, the Board may adopt a resolution fixing a Demand Record Date for the purpose of determining the stockholders entitled to demand that the secretary of the Corporation call a special meeting, which date shall not precede the date upon which the resolution fixing the Demand Record Date is adopted by the Board. If no resolution fixing a Demand Record Date has been adopted by the Board within the ten (10) day period after the date on which such a request to fix a Demand Record Date was received, the Demand Record Date in respect thereof shall be deemed to be the twentieth (20th) day after the date on which such a request is received. Notwithstanding anything in this Section 7 to the contrary, no Demand Record Date shall be fixed if the Board determines that the demand or demands that would otherwise be submitted following such Demand Record Date could not comply with the requirements set forth in clauses (ii), (iv), (v), or (vi) of Section 7(f).

(e) Without qualification, a special meeting of the stockholders shall not be called pursuant to Section 7(a) unless stockholders of record as of the Demand Record Date who hold, in the aggregate, not less than twenty-five percent (25%) of the voting power of the outstanding shares of the Corporation (the “**Requisite Percentage**”) timely provide one or more demands to call such special meeting in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation. Only stockholders of record on the Demand Record Date shall be entitled to demand that the secretary of the Corporation call a special meeting of the stockholders pursuant to Section 7(a). To be timely, a stockholder’s demand to call a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not later than the sixtieth (60th) day following the Demand Record Date. To be in proper form for purposes of this Section 7, a demand to call a special meeting shall set forth (i) the business proposed to be conducted at the special meeting or the proposed election of directors at the special meeting, as the case may be, (ii) 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 the Bylaws of the Corporation, the language of the proposed amendment), if applicable, and (iii) with respect to any stockholder or stockholders submitting a demand to call a special meeting (except for any stockholder that has provided such demand in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A) (a “**Solicited Stockholder**”) the information required to be provided pursuant to this Section 7 of a Requesting Person. A stockholder may revoke a demand to call a special meeting by written revocation delivered to the secretary at any time prior to the special meeting. If any such revocation(s) are received by the secretary after the secretary’s receipt of written demands from the holders of the Requisite Percentage of stockholders, and as a result of such revocation(s), there no longer are unrevoked demands from the Requisite Percentage of stockholders to call a special meeting, the Board shall have the discretion to determine whether or not to proceed with the special meeting.

(f) The secretary shall not accept, and shall consider ineffective, a written demand from a stockholder to call a special meeting (i) that does not comply with this Section 7, (ii) that relates to an item of business to be transacted at such meeting that is not a proper subject for stockholder action under applicable law, (iii) that includes an item of business to be transacted at such meeting that did not appear on the written request that resulted in the determination of the Demand Record Date, (iv) that relates to an item of business (other than the election of directors) that is identical or substantially similar to an item of business (a “**Similar Item**”) for which a record date for notice of a stockholder meeting (other than the Demand Record Date) was previously fixed and such demand is delivered between the time beginning on the sixty-first (61st) day after such previous record date and ending on the one-year anniversary of such previous record date, (v) if a Similar Item will be submitted for stockholder approval at any stockholder meeting to be held on or before the ninetieth (90th) day after the secretary receives such demand, or (vi) if a Similar Item has been presented at the most recent annual meeting or at any special meeting held within one year prior to receipt by the secretary of such demand to call a special meeting.

(g) After receipt of demands in proper form and in accordance with this Section 7 from a stockholder or stockholders holding the Requisite Percentage, the Board shall duly call, and determine the place, date, and time of, a special meeting of stockholders for the purpose or purposes and to conduct the business specified in the demands received by the Corporation. Notwithstanding anything in these Bylaws to the contrary, the Board may submit its own proposal or proposals for consideration at such a special meeting. The record date for notice and voting for such a special meeting shall be fixed in accordance with Section 11 of this Article II. The Board shall provide written notice of such special meeting to the stockholders in accordance with Section 3 of this Article II. The business to be conducted at any special meeting of the stockholders shall be limited to the purpose or purposes stated in the notice.

(h) In connection with a special meeting called in accordance with this Section 7, the stockholder or stockholders (except for any Solicited Stockholder) who requested that the Board fix a record date for the special meeting in accordance with this Section 7 or who delivered a demand to call a special meeting to the secretary shall further update and supplement the information previously provided to the Corporation in connection with such request or demand, if necessary, so that the information provided or required to be provided in such request or demand pursuant to this Section 7 shall be true and correct as of the record date for the special meeting and as of the date that is ten (10) business days prior to the special meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal executive offices of the Corporation not later than five (5) business days following the later of the record date for the meeting or the date notice of the record date for the meeting is first publicly disclosed (in the case of the update and supplement required to be made as of such record date), and not later than eight (8) business days prior to the date for the special meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the special meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the special meeting or any adjournment or postponement thereof).

(i) Notwithstanding anything in these Bylaws to the contrary, the secretary shall not be required to call a special meeting pursuant to this Section 7 except in accordance with this Section 7. If the Board shall determine that any request to fix a record date for the special meeting or demand to call and hold a special meeting was not properly made in accordance with this Section 7, or shall determine that the stockholder or stockholders requesting that the Board fix such record date or submitting a demand to call the special meeting have not otherwise complied with this Section 7, then the Board shall not be required to fix such record date or to call and hold the special meeting. In addition to the requirements of this Section 7, each Requesting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to any request to fix a record date for the special meeting or demand to call a special meeting.

Section 8. Quorum and Adjournment.

(a) At any meeting of the stockholders, the holders of a majority in voting power of the stock issued and outstanding and entitled to vote at the meeting, present in person, present by any means of remote communication authorized by the Board in its sole discretion, or represented by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, the Certificate of Incorporation, or these Bylaws. Where a separate vote by a class or classes or series is required, a majority of the voting power of the shares of such class or classes or series present in person, present by any means of remote communication authorized by the Board in its sole discretion, or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum.

(b) If a quorum shall not be present or represented at any annual or special meeting of the stockholders, the chairperson of the meeting, or the holders of a majority in voting power of the shares of stock of the Corporation, which are entitled to vote at the meeting and are present in person, present by any means of remote communication authorized by the Board in its sole discretion or represented by proxy, shall have power to adjourn the meeting from time to time until a quorum is present or represented. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; *provided, however*, that if the date of any adjourned meeting is more than thirty (30) days after the date for which the meeting was originally noticed, notice of the place, if any, date, and time of the adjourned meeting and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, shall be given in conformity herewith. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. At any adjourned meeting, any business may be transacted that might have been transacted at the original meeting.

Section 9. Voting. The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 11 of this Article II, Section 217 (relating to voting rights of fiduciaries, pledgers, and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL. Except as may be otherwise provided in the Certificate of Incorporation or these Bylaws, each stockholder voting shall be entitled to one (1) vote for each share of capital stock of the Corporation held by such stockholder that has voting power upon the matter in question. At all meetings of stockholders for the election of directors at which a quorum is present, a plurality of the votes cast shall be sufficient to elect a director. All other elections and questions presented to the stockholders at a meeting at which a quorum is present shall, unless otherwise provided by the Certificate of Incorporation, these Bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or applicable law or pursuant to any regulation applicable to the Corporation or its securities, be decided by the affirmative vote of the holders of a majority in voting power of the shares of stock of the Corporation, which are entitled to vote at the meeting and are present in person, present by any means of remote communication authorized by the Board in its sole discretion, or represented by proxy.

Section 10. Stockholder Action by Written Consent.

(a) Any action required or permitted to be taken at an annual or special meeting of stockholders 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, (i) shall be signed by holders of record on the record date established pursuant to Section 10(b) below (the **“Written Consent Record Date”**) of outstanding shares of the Corporation 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 (ii) shall be delivered to the Corporation at its registered office in the State of Delaware, at its principal place of business or to an officer or agent of the Corporation having custody of the minute books in which proceedings of meetings of stockholders are recorded. Delivery shall be made by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of the signature of each stockholder who signs the consent, and no written consent shall be effective to take corporate action unless, within sixty (60) days of the earliest dated valid consent delivered in the manner described in this Section 10, written consents signed by a sufficient number of holders to take such action are delivered to the Corporation in the manner described in this Section 10. Only stockholders of record on the Written Consent Record date shall be entitled to consent to corporate action in writing without a meeting.

(b) Without qualification, any stockholder of record seeking to have the stockholders authorize or take any action by written consent shall first request in writing that the Board fix a Written Consent Record Date for the purpose of determining the stockholders entitled to take such action, which request shall be in proper form and delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation. Within ten (10) days after receipt of a request in proper form and otherwise in compliance with this Section 10(b) from any such stockholder, the Board may adopt a resolution fixing a Written Consent Record Date for the purpose of determining the stockholders entitled to take such action, 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 resolution fixing a record date has been adopted by the Board within such ten (10) day period after the date on which such a request is received, (i) the Written Consent Record Date for determining stockholders entitled to consent to such action, when no prior action of the Board of Directors is required by applicable law, shall be the first date on which valid signed written consents constituting 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 setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner described in this Section 10, and (ii) the Written Consent Record Date for determining stockholders entitled to consent to such action, when prior action by the Board is required by applicable law, shall be at the close of business on the date on which the Board adopts the resolution taking such prior action.

(c) To be in proper form for purposes of this Section 10, a request by a stockholder for the Board to fix a Written Consent Record Date shall set forth:

(i) As to each Soliciting Person (as defined below), the Stockholder Information (as defined in Section 5(c)(i) of this Article II, except that for purposes of this Section 10 the term "Soliciting Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 5(c)(i) of this Article II);

(ii) As to each Soliciting Person, any Disclosable Interests (as defined in Section 5(c)(ii) of this Article II, except that for purposes of this Section 10 the term "Soliciting Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 5(c)(ii) of this Article II and the disclosure in clause (H) of Section 5(c)(ii) of this Article II shall be made with respect to the action or actions proposed to be taken by written consent);

(iii) As to the action or actions proposed to be taken by written consent, (A) a reasonably brief description of the action or actions, the reasons for taking such action or actions and any material interest in such action or actions of each Soliciting Person, (B) the text of the resolutions or consent proposed to be acted upon by written consent of the stockholders, and (C) a reasonably detailed description of all agreements, arrangements, and understandings (x) between or among any of the Soliciting Persons and (y) between or among any Soliciting Person and any other person or entity (including their names) in connection with the request or such action or actions; and

(iv) If directors are proposed to be elected by written consent, the Nominee Information for each person whom a Requesting Person proposes to elect as a director by written consent.

For purposes of this Section 10, the term "**Soliciting Person**" shall mean (A) the stockholder making a request for the Board to fix a record date and proposing the action or actions to be taken by written consent, (B) the beneficial owner or beneficial owners, if different, on whose behalf such request is made, and (C) any affiliate or associate of such stockholder or beneficial owner.

(d) In connection with an action or actions proposed to be taken by written consent in accordance with this Section 10, the stockholder or stockholders seeking such action or actions shall further update and supplement the information previously provided to the Corporation in connection therewith, if necessary, so that the information provided or required to be provided pursuant to this Section 10 shall be true and correct as of the record date for determining the stockholders eligible to take such action and as of the date that is five (5) business days prior to the date the consent solicitation is commenced, and such update and supplement shall be delivered to, or mailed and received by, the secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining the stockholders eligible to take such action (in the case of the update and supplement required to be made as of the record date), and not later than three (3) business days prior to the date that the consent solicitation is commenced (in the case of the update and supplement required to be made as of five (5) business days prior to the commencement of the consent solicitation).

(e) Notwithstanding anything in these Bylaws to the contrary, no action may be taken by the stockholders by written consent except in accordance with this Section 10. If the Board shall determine that any request to fix a Written Consent Record Date or to take stockholder action by written consent was not properly made in accordance with this Section 10, or the stockholder or stockholders seeking to take such action do not otherwise comply with this Section 10, then the Board of Directors shall not be required to fix a Written Consent Record Date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law. In addition to the requirements of this Section 10 with respect to stockholders seeking to take an action by written consent, each Soliciting Person shall comply with all requirements of applicable law, including all requirements of the Exchange Act, with respect to such action.

Section 11. Record Date.

(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, except as otherwise required by law, fix a record date, which record date shall not precede the date on which the resolution fixing the record date is adopted and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of any meeting of stockholders. 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.

(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 shall not be more than sixty (60) days prior to such other action. If no such record date is fixed for determining stockholders entitled to receive payment of any dividend or other distribution or allotment of rights or to exercise any rights of change, conversion, or exchange of stock or for any other purpose, the record date shall be at the close of business on the day on which the Board adopts a resolution relating thereto.

(c) 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.

Section 12. Proxies and Voting. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A stockholder may revoke any proxy that 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. A proxy may be in the form of a telegram, cablegram, or other means of electronic transmission, which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the stockholder.

Section 13. List of Stockholders Entitled to Vote. The officer who has charge of the stock ledger of the Corporation shall prepare and make, 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. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. 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 Corporation's principal executive office. 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 the list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder 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. Such list shall presumptively determine the identity of the stockholders entitled to vote at the meeting and the number of shares held by each of them.

ARTICLE III

DIRECTORS

Section 1. Powers. Subject to the provisions of the DGCL and any limitations in the Certificate of Incorporation or these Bylaws relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

Section 2. Number of Directors. The number of directors which shall constitute the whole Board shall be not less than three (3) nor more than nine (9). The exact number of directors within the minimum and maximum limitation specified in the preceding sentence shall be fixed from time to time exclusively by resolution of the Board, acting by the vote of not less than a majority of the directors then in office. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 3. Election, Qualification, and Term of Office of Directors. Except as provided in Section 4 of this Article III, each director, including a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is duly elected and qualified or until such director's earlier death, resignation, or removal. Directors need not be stockholders unless so required by the Certificate of Incorporation or these Bylaws. The Certificate of Incorporation or these Bylaws may prescribe other qualifications for directors.

Section 4. Resignations and Vacancies.

(a) Any director may resign at any time by giving notice in writing or by electronic transmission to the chairman of the board, the president, or the secretary of the Corporation. Such resignation shall take effect at the time specified therein or upon the happening of an event or events specified therein, or if the time is not specified and the resignation is not made contingent upon the happening of an event or events, upon receipt thereof; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Unless otherwise provided in the Certificate of Incorporation or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders having the right to vote as a single class may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. If at any time, by reason of death or resignation or other cause, the Corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee, or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the Certificate of Incorporation or these Bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL. If, at the time of filling any vacancy or any newly created directorship, the directors then in office constitute less than a majority of the whole Board (as constituted immediately prior to any such increase), then the Court of Chancery may, upon application of any stockholder or stockholders holding at least ten percent (10%) of the total number of the shares at the time outstanding, having the right to vote for such directors, summarily order an election to be held to fill any such vacancies or newly created directorships, or to replace the directors chosen by the directors then in office as aforesaid, which election shall be governed by the provisions of Section 211 of DGCL as far as applicable.

Section 5. Place of Meetings; Meetings by Telephone. The Board may hold meetings, both regular and special, either within or outside the State of Delaware. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this Section 5 shall constitute presence in person at the meeting.

Section 6. Regular Meetings. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board.

Section 7. Special Meetings. Special meetings of the Board may be called by the chairman of the board or the president on two (2) days' notice to each director if provided either by mail or overnight courier, or upon advance notice if provided either personally, by telephone, or email. Special meetings of the Board shall be called by the chairman of the board, president, or secretary in like manner and on like notice on the written request of two directors unless the Board consists of only one director, in which case special meetings shall be called by the chairman of the board, president, or secretary in like manner and on like notice on the written request of the sole director.

Section 8. Quorum. At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business and 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, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 9. Board Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, 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 or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 10. Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, the Board shall have the authority to fix stated salaries for directors for their service in such capacity and to provide for payment of a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board. The Board shall also have the authority to provide for payment of a fixed sum and expenses of attendance, if any, payable to members of committees for attending committee meetings.

Section 11. Removal of Directors. Unless otherwise restricted by statute, by the Certificate of Incorporation, or by these Bylaws, any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors. No reduction of the authorized number of directors shall have the effect of removing any director prior to the expiration of such director's term of office.

Section 12. Waivers. A written waiver of any notice, signed by a director entitled to notice, or waiver by electronic transmission by such person, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person. Neither the business nor the purpose of any meeting need be specified in such a waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

ARTICLE IV
COMMITTEES OF DIRECTORS

Section 1. Committees of Directors. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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 thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board or in these Bylaws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it; but no such committee shall have the power or authority to (a) approve or adopt, or recommend to the stockholders, any action or matter expressly required by the DGCL to be submitted to stockholders for approval or (b) adopt, amend, or repeal any bylaw of the Corporation.

Section 2. Committee Minutes. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

Section 3. Meetings and Action of Committees. Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of: Section 5 of Article III (Place of Meetings and Meetings by Telephone), Section 6 of Article III (Regular Meetings), Section 7 of Article III (Special Meetings), Section 8 of Article III (Quorum), Section 12 of Article III (Waivers), and Section 9 of Article III (Board Action by Written Consent Without a Meeting), with such changes in the context of those Bylaws as are necessary to substitute the committee and its members for the Board and its members. However, (a) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee, (b) special meetings of committees may also be called by resolution of the Board, and (c) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these Bylaws.

ARTICLE V
OFFICERS

Section 1. Officers. The officers of the Corporation shall be a chairman of the board, a president, and a secretary. The Corporation may also have, at the discretion of the Board, a chief executive officer, a chief financial officer, or treasurer, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and any such other officers as may be appointed in accordance with the provisions of these Bylaws. Any number of offices may be held by the same person, unless the Certificate of Incorporation or these Bylaws otherwise provide.

Section 2. Appointment of Officers. The officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 3 or Section 8 of this Article V, shall be chosen by the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Subordinate Officers. The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers and agents as the business of the Corporation may require, each of whom shall hold office for such period, have such authority, and perform such duties as are provided in these Bylaws or as the Board may from time to time determine.

Section 4. Removal and Resignation of Officers.

(a) Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, either with or without cause, by an affirmative vote of the majority of the Board then in office at any regular or special meeting of the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

(b) Any officer may resign at any time by giving written notice to the Corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Corporation under any contract to which the officer is a party.

Section 5. Vacancies in Offices. Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 3 of this Article V.

Section 6. Chairman of the Board. The chairman of the board shall, if present, preside at meetings of the Board and of the stockholders of the Corporation and exercise and perform such other powers and duties as may from time to time be assigned to him by the Board or as may be prescribed by these Bylaws.

Section 7. Chief Executive Officer. The chief executive officer shall be responsible for corporate policy and strategy and general supervision, direction, and control of the business, property, affairs, and officers of the Corporation. The chief executive officer shall preside, in the absence or non-existence of a chairman of the board, at all meetings of the Board and all meetings of the stockholders. The chief executive officer shall have the general powers and duties of management usually vested in the office of chief executive officer of a corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. President. The president will have general responsibility for the management and control of the operations of the Corporation. If there is no chief executive officer, the president shall be the chief executive officer of the Corporation, except as the Board may otherwise provide.

Section 9. Chief Financial Officer. The chief financial officer shall act in an executive financial capacity. The chief financial officer shall provide such assistance to and perform such other duties as may be requested by the Board, the chairman of the board, the chief executive officer or the president in the general supervision of the Corporation's financial policies and affairs.

Section 10. Vice President. In the absence of the president or in the event of his or her inability or refusal to act, the vice-president (or in the event there be more than one vice-president, the vice-presidents in the order designated by the Board, or in the absence of any designation, then in the order of their election) shall perform the duties of the president and, when so acting, shall have all the powers of and be subject to all the restrictions upon the president. The vice-presidents shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 11. Secretary and Assistant Secretary.

(a) The secretary shall keep or cause to be kept, at the principal executive office of the Corporation or such other place as the Board may direct, a book of minutes of all meetings and actions of directors, committees of directors, and stockholders. The minutes shall show the time and place of each meeting, whether regular or special (and, if special, how authorized and the notice given), the names of those present at directors' meetings or committee meetings, the number of shares present or represented at stockholders' meetings, and the proceedings thereof. The secretary shall give, or cause to be given, notice of all meetings of the stockholders and of the Board required to be given by law or by these Bylaws. He or she shall keep the seal of the Corporation, if one be adopted, in safe custody and shall have such other powers and perform such other duties as may be prescribed by the Board or by these Bylaws.

(b) The assistant secretary, or if there be more than one, the assistant secretaries in the order designated by the Board (or if there be no such designation, then in the order of their election) shall, in the absence of the secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of secretary and shall perform such other duties and have such other powers as the Board may from time to time prescribe.

Section 12. Treasurer and Assistant Treasurer.

(a) The treasurer shall keep and maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties and business transactions of the Corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and shares. The books of account shall at all reasonable times be open to inspection by any director. The treasurer shall deposit all money and other valuables in the name and to the credit of the Corporation with such depositories as may be designated by the Board. He or she shall disburse the funds of the Corporation as may be ordered by the Board, shall render to the chief executive officer and directors, whenever they request it, an account of all of his or her transactions as treasurer and of the financial condition of the Corporation, and shall have such other powers and perform such other duties as may be prescribed by the Board or these Bylaws.

(b) The assistant treasurer, or if there shall be more than one, the assistant treasurers in the order determined by the Board (or if there be no such determination, then in the order of their election) shall, in the absence of the treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the treasurer and shall perform such other duties and have such other powers as the board of the directors may from time to time prescribe.

ARTICLE VI

STOCK

Section 1. Certificates for Shares; Uncertificated Shares. The shares of the Corporation shall be evidenced by certificates; *provided, however*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of stock of the Corporation shall be uncertificated shares. Any such resolution shall not apply to shares evidenced by a certificate until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock evidenced by certificates, and upon request every holder of uncertificated shares, shall be entitled to have a certificate signed by, or in the name of the Corporation by, the chairperson or a vice-chairperson of the Board or the president or a vice-president, and by treasurer or an assistant treasurer, or the secretary or an assistant secretary, certifying the number of shares owned by such stockholder. Any or all of the signatures on a 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 has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 2. Lost Certificates. Except as provided in this Section 2, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may direct a new certificate or certificates or uncertificated shares to be issued in place of any certificate or certificates theretofore issued by the Corporation, alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates or uncertificated shares, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

Section 3. Transfers of Stock. Subject to any restrictions on transfer and unless otherwise provided by the Board, shares of stock that are represented by a certificate may be transferred on the books of the Corporation by the surrender to the Corporation or its transfer agent of the certificate theretofore properly endorsed or accompanied by a written assignment or power of attorney properly executed, with transfer stamps (if necessary) affixed, and with such proof of the authenticity of signature as the Corporation or its transfer agent may reasonably require. Shares of stock that are not represented by a certificate may be transferred on the books of the Corporation by submitting to the Corporation or its transfer agent such evidence of transfer and following such other procedures as the Corporation or its transfer agent may require.

Section 4. Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for call and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

ARTICLE VII GENERAL PROVISIONS

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

Section 2. Annual Statement. The Board shall present at each annual meeting, and at any special meeting of the stockholders when called for by vote of the stockholders, a full and clear statement of the business and condition of the Corporation.

Section 3. Checks. From time to time, the Board shall determine by resolution which person or persons may sign or endorse all checks, drafts, other orders for payment of money, notes, or other evidences of indebtedness that are issued in the name of or payable to the Corporation, and only the persons so authorized shall sign or endorse those instruments.

Section 4. Fiscal Year. The fiscal year of the Corporation shall be as fixed by resolution of the Board.

Section 5. Seal. The corporate seal shall be in the form adopted by the Board and such seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII
INDEMNIFICATION

Section 1. Right to Indemnification. The Corporation shall indemnify its officers, directors, employees and agents to the fullest extent permitted by Section 145 of the DGCL, as amended from time to time, and by the Certificate of Incorporation. Each person who was or is made 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 (hereinafter, a **“proceeding”**) (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, partner, employee or agent 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”**), shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred or suffered by such indemnitee in connection therewith if such indemnitee acted in good faith and in a manner the indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the indemnitee did not act in good faith and in a manner which the indemnitee reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, had reasonable cause to believe that the conduct was unlawful.

Section 2. Actions by the Corporation. Each person who was or is made a party or is threatened to be made a party to any threatened, pending or completed proceeding by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, officer, partner, employee or agent of another corporation or of a partnership, joint venture, trust or other enterprise shall be indemnified and held harmless by the Corporation against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) actually and reasonably incurred by such person in connection with the defense or settlement of such proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the Corporation, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless, and only to the extent that, the Court of Chancery or the court in which such proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court may deem proper.

Section 3. Continuation of Indemnification. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 4. Right to Advancement of Expenses. In addition to the right to indemnification conferred in this Article VIII, any director or officer shall, to the fullest extent not prohibited by applicable law, also have the right to be paid by the Corporation the expenses (including attorneys' fees) incurred by such director or officer in defending any such proceeding in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII or otherwise.

Section 5. Board Authorization. Unless ordered by a court of competent jurisdiction, any indemnification or advancement of expenses provided for in this Article VIII shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent or advancement of expenses to such person is proper in the circumstances because that person has met the applicable standard of conduct. Such determination shall be made, with respect to a person who is a director or officer of the Corporation at the time of such determination: (a) by a majority vote of the directors who are not parties to such proceeding, even though less than a quorum; (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders of the Corporation.

Section 6. Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VIII shall not be exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these Bylaws, agreement, vote of stockholders or disinterested directors, or otherwise.

Section 7. 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 liability under the DGCL.

Section 8. Other Indemnification. The Corporation's obligation, if any, to indemnify or advance expenses to any indemnitee who was or is serving at its request as a director, officer, employee, agent, or trustee of another corporation, partnership, joint venture, trust, enterprise, or non-profit entity shall be reduced by any amount such indemnitee may collect as indemnification or advancement of expenses from such other corporation, partnership, joint venture, trust, enterprise, or non-profit enterprise.

Section 9. Nature of Rights. The rights conferred upon indemnitees in this Article VIII shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, or trustee and shall inure to the benefit of the indemnitee's heirs, executors, and administrators. Any amendment, alteration, or repeal of this Article VIII that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate 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, alteration, or repeal.

Section 10. Saving Clause. If this Article VIII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and advance expenses to each director and officer to the fullest extent not prohibited by any applicable portion of this Article VIII that shall not have been invalidated, or by any other applicable law. If this Article VIII shall be invalid due to the application of the indemnification provisions of another jurisdiction, then the Corporation shall indemnify and advance expenses to each director and officer to the fullest extent permitted under any other applicable law.

ARTICLE IX

FORUM FOR ADJUDICATION OF DISPUTES

Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action 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 asserting a claim arising pursuant to any provision of the Delaware General Corporation Law, or (d) any action asserting a claim governed by the internal affairs doctrine shall be a state or federal court located within the state of Delaware, in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article IX.

ARTICLE X

AMENDMENTS

These Bylaws may be altered, amended, or repealed or new bylaws may be adopted by the stockholders or by the Board, when such power is conferred upon the Board by the Certificate of Incorporation at any regular meeting of the stockholders or of the Board or at any special meeting of the stockholders or of the Board if notice of such alteration, amendment, repeal, or adoption of new bylaws be contained in the notice of such special meeting. If the power to adopt, amend, or repeal bylaws is conferred upon the Board by the Certificate of Incorporation it shall not divest or limit the power of the stockholders to adopt, amend, or repeal bylaws.

Mitek Systems, Inc.
Executive Bonus Program Fiscal Year 2015

Objective

The objective of the Mitek Executive Bonus Program (the “Program”) is to reward executives with an opportunity to earn an annual cash bonus for their contributions to the achievement of corporate goals during the fiscal year. This plan is intended to ensure a competitive total compensation opportunity and to foster a team effort in the attainment of corporate goals.

Program Design

The Program provides for the payment of an annual cash bonus that is based upon the percentage achievement of the fiscal 2015 annual revenue and non-GAAP net income targets set by the Board of Directors (the “Board”) as well as individual performance goals.

Annual cash bonuses are computed as a percentage of the participant’s annualized salary earned during the 2015 fiscal year. The bonus targets for the CEO and CFO are equal to 80% and 50%, respectively, of their respective annualized salaries for fiscal 2015. The total annual cash bonus will be comprised of the following components: 50% based on revenue performance, 25% based on non-GAAP net income performance and 25% based on individual performance goals.

Eligibility

In order to be eligible for a bonus award, the participant must be employed by the Company for a minimum of a full quarter of the fiscal year for which an annual bonus is earned. Each participant will be paid after the close of the books and annual audit at the end of the 2015 fiscal year, and any bonus payable will be calculated pro rata to the number of days of employment with the Company during the 2015 fiscal year.

Limitations

The Program is administered by the Compensation Committee. Final authority and full discretion in all matters pertaining to the development or amendment of the Program and the granting of any bonus award under the Program rests with the Compensation Committee.

Participation in the Program does not in any way imply a contractual relationship for employment or in any way alter the at-will employment relationship with the Company.



Mitek Names Financial Technology Industry Veteran James Hale to Board of Directors

Mr. Hale will be active in the company's financial governance and corporate development activities

SAN DIEGO – November 5, 2014—Mitek (NASDAQ: MITK, www.miteksystems.com), the leading innovator of mobile imaging for financial transactions and identity, today announced the election of James Hale to the Mitek Board of Directors, commencing immediately. He replaces Mrs. Sally Thornton who is resigning after 28 years of Board service.

“Mr. Hale will bring important skills to Mitek including financial expertise, corporate development and a keen eye for financial opportunities in the payments and technology industries,” said James B. DeBello, President and CEO of Mitek. “We are pleased to have Mr. Hale join our Board of Directors and thank Sally Thornton for her many years of service and guidance to Mitek. She was an invaluable member of our Board during Mitek’s transformation from a government supplier of security solutions, to a leading developer of computer vision mobile applications in the financial services industry.”

James Hale co-founded FTV Capital, which manages over \$1.7 billion in growth equity funds, in 1998 and has three decades of management experience in private equity investing and commercial and investment banking.

Mr. Hale recently served as Chairman of Official Payments Holdings, Inc. during its acquisition by ACI Worldwide, a leading international provider of electronic payment systems, in 2013. He currently serves on the Boards of Directors of Bank of Marin, a leading independent commercial and retail bank in northern California, and Loyal3, a platform which offers publicly traded stock directly to consumers. Mr. Hale previously served on the Board of Directors of the National Venture Capital Association, Duke University Management Company, and the Investment Committee of University of California Berkeley Foundation. Mr. Hale received a BS from the University of California at Berkeley, an MBA from Harvard University and is a Certified Public Accountant.

About Mitek

Headquartered in San Diego, CA, Mitek (NASDAQ: MITK) is the leading innovator of mobile imaging for financial transactions and identity. Mitek’s patented mobile photo technology automatically captures images of financial and personal documents and then extracts relevant data. This enables consumers to use the Camera as a Keyboard™ to reduce friction for mobile check deposit, account opening, bill payment, insurance quoting, and many other use cases. This innovative technology is licensed by more than 3,000 organizations and used by tens of millions of consumers enabling increased customer acquisition, retention and operational efficiency. www.miteksystems.com MITK-F

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Read our latest blog post: <http://www.miteksystems.com/blog>

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