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

May 31, 2022 (May 24, 2022)
Date of Report (Date of earliest event reported)

DENTSPLY SIRONA Inc.

(Exact name of registrant as specified in its charter)

Delaware	**0-16211**	**39-1434669**
(State or other jurisdiction of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification No.)

13320 Ballantyne Corporate Place,	**Charlotte**	**North Carolina**	**28277-3607**
(Address of Principal Executive Offices)			(Zip Code)

(844) 848-0137
(Registrant's telephone number, including area code)

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 (see General Instruction A.2. below):

☐ 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))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value $0.01 per share	**XRAY**	**The Nasdaq Stock Market LLC**

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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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.

Key Employee Severance Plan

On May 24, 2022, the Human Resources Committee of the Board of Directors (the "Committee") of Dentsply Sirona Inc. (the “Company”), as part of its ongoing review of the Company’s executive compensation and retention program, approved the terms of the Dentsply Sirona Inc. Key Employee Severance Benefits Plan (the “Severance Plan”) and on May 25, 2022, the Board ratified the Committee’s approval of the Severance Plan. The Severance Plan provides for severance payments and benefits to certain eligible Employees (as defined in the Severance Plan), including executive officers, of the Company in the event that the applicable Employee (A) resigns for “Good Reason” (as defined in the Severance Plan) or (B) is involuntarily terminated by the Company without “Cause” (as defined in the Severance Plan) (each, a “Non-COC Qualified Termination”), with increased severance payments and benefits in connection with, or within a specified period of time following a “change of control” (as defined in the Severance Plan) (a “COC Qualified Termination”), or for eligible Employees other than the CEO outside of such a change of control, such Employee's termination, on or prior to December 31, 2023 (a "Limited Initial Coverage Period Qualified Termination" and, together with a COC Qualified Termination and a Non-COC Qualified Termination, a "Qualified Termination"). The Interim CEO (as defined in the Severance Plan) and the Interim CFO (as defined in the Severance Plan) are ineligible to participate in the Severance Plan.

Upon a Non-COC Qualified Termination, and subject to his or her satisfaction of the conditions to severance described below, the CEO would be entitled to receive severance pay equal to (A) 2.0 times the sum of: (i) his or her annual base salary; (ii) his or her annual target bonus for the fiscal year including the date of termination; and (iii) 12 months of applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on his or her active insurance coverage elections at the date of termination plus (B) a prorated annual bonus, if any, payable in the normal course with other executives based upon the actual achievement of performance targets for the fiscal year including the date of termination, plus (C) for any equity-compensation awards held pursuant to the Dentsply Sirona Inc. 2016 Omnibus Incentive Plan, as amended (the "Equity Plan"), if such awards provide for accelerated vesting in the event of termination without Cause, then such awards are also deemed to accelerate vesting in the event of a resignation with Good Reason.

Upon a Non-COC Qualified Termination, all eligible Employees other than the CEO would be entitled to receive severance pay equal to (A) 1.0 times the sum of: (i) his or her annual base salary; (ii) his or her annual target bonus for the fiscal year including the date of termination; and (iii) 12 months of applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the his or her active insurance coverage elections at the date of termination, plus (B) a prorated annual bonus, if any, payable in the normal course with other executives based upon the actual achievement of performance targets for the fiscal year including the date of termination, plus (C) for any equity-compensation awards held pursuant to the Equity Plan, if such awards provide for accelerated vesting in the event of termination without Cause, then such awards are also deemed to accelerate vesting in the event of a resignation with Good Reason.

Upon a COC Qualified Termination, and subject to his or her satisfaction of the conditions to severance described below, the CEO would be eligible to receive enhanced severance pay equal to (A) 3.0 times the sum of: (i) his or her annual base salary; (ii) his or her annual target bonus for the fiscal year including the date of termination; and (iii) 12 months of applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on his or her active insurance coverage elections at the date of termination, plus (B) for any equity-compensation awards held pursuant to the Equity Plan, if such awards provide for accelerated vesting in the event of a “Change in Control” (as defined in the Equity Plan), then "Good Reason" for purposes of accelerated vesting under the Equity Plan shall instead be determined under the definition of Good Reason under the Severance Plan.

Upon a COC Qualified Termination, and subject to his or her satisfaction of the conditions to severance described below, all eligible Employees other than the CEO would be eligible to receive severance pay equal to (A) 2.0 times the sum of: (i) his or her annual base salary; (ii) his or her annual target bonus for the fiscal year including the date of termination; and (iii) 12 months of applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on his or her active insurance coverage elections at the date of termination, plus (B) for any equity-compensation awards held pursuant to the Equity Plan, if such awards provide for accelerated vesting in the event of a “change in control” (as defined in the Equity Plan), then "Good Reason" for purposes of accelerated vesting under the Equity Plan shall instead be determined under the definition of Good Reason under the Severance Plan.

Finally, upon a Limited Initial Coverage Period Qualified Termination, any eligible Employees other than the CEO would be entitled to receive severance pay equal to (A) 1.5 times the sum of: (i) his or her annual base salary; (ii) his or her annual target bonus for the fiscal year including the date of termination; and (iii) 12 months of applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on his or her active insurance coverage elections at the date of termination, plus (B) a prorated annual bonus, if any, payable in the normal course with other executives based upon the actual achievement of performance targets for the fiscal year including the date of termination, plus (C) if such Employee received a retention equity award via notification from the interim CEO on April 27, 2022 (a "Retention Equity Award"), such Retention Equity Award becomes fully vested and nonforfeitable upon the date of such Limited Initial Coverage Period Qualified Termination. Eligibility for a Limited Initial Coverage Period Qualified Termination will naturally expire and have no further effect as of 11:59 p.m. EST on December 31, 2023.

As a condition to an eligible Employee's receipt of severance benefits under the Severance Plan with respect to a Qualified Termination, the Employee must execute and not revoke a General Release and Waiver of all claims against the Company and all its Affiliates (as defined in the Severance Plan).

The foregoing description of the Severance Plan is qualified in its entirety by reference to the text of the Severance Plan filed as Exhibit 10.1 and incorporated herein by reference.

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

On May 25, 2022, the Board of Directors (the “Board”) of DENTSPLY SIRONA Inc. (the “Company”) adopted and approved the Sixth Amended and Restated By-laws of the Company (as amended and restated, the “Amended Bylaws”).

The Amended Bylaws are generally designed to ensure compliance with applicable laws, rules and regulations, to reflect the current practices and policies of the Company, and to conform to current market practices and policies of other public companies. Among other matters, the Amended Bylaws are revised to: (i) update definitions of terms such as electronic transmission, electronic mail and electronic mail address and otherwise further clarify the ability of electronic transmissions for board and stockholder meetings, (ii) opt out of the Delaware corporate statute permitting electronic delivery and signatures for purposes of notices or information to be provided to the Company or its officers, (iii) provide for supplemental telephonic or electronic notice to directors living outside the U.S. when notice is provided by courier or mail, (iv) specifies that a shareholder that makes a proposal or nominates a director candidate for election to the Board, or their Qualified Representative (as defined in the Amended Bylaws) must appear in person at the shareholder meeting in which such proposal or nomination is to be considered, (v) broaden the definition of “public announcement” in connection with meeting announcements made by the Company, (vi) specified additional disclosure requirements for proposing shareholders and director nominees relating to their respective relationships with and interests in the Company and set forth specific diligence processes available to the Board to assist in the vetting of any nominee for election to the Board, (vii) establish specific timing requirements for updating disclosure provided by or relating to a shareholder making a proposal or nomination and a director nominee, and (viii) update miscellaneous construction and interpretation provisions.

The Amended Bylaws also include the amendment to the exclusive forum bylaw provision to designate the exclusive forum for the adjudication of certain legal matters, which is described in the Company’s proxy statement filed with the SEC on April 13, 2022 and which amendment was approved by the Company’s shareholders at its annual meeting of shareholders on May 25, 2022.

The foregoing description of the Amended Bylaws is not complete and is qualified in its entirety by reference to the full text of the Amended Bylaws, a copy of which is attached hereto as Exhibit 3.1 and incorporated herein by reference.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits:

Exhibit No.	Description
3.1	Sixth Amended and Restated Bylaws of DENTSPLY SIRONA Inc.
10.1	Dentsply Sirona Inc. Key Employee Severance Benefits Plan, dated May 25, 2022*
104	Cover Page Interactive Date File (embedded within the Inline XBRL Document)

*Management contract or compensatory plan.

SIGNATURE

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

DENTSPLY SIRONA Inc.

By: */s/ Cherée H. Johnson*

Cherée H. Johnson, Senior Vice President,
Chief Legal Officer, General Counsel and Secretary

Date: May 31, 2022

DENTSPLY SIRONA INC.

SIXTH AMENDED AND RESTATED BY-LAWS

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FIFTH AMENDED AND RESTATED BY-LAWS

OF

DENTSPLY SIRONA INC.

ARTICLE I

STOCKHOLDERS' MEETINGS

Section 1. Annual Meetings. The annual meeting of the stockholders, for the purpose of electing directors and for the transaction of such other business as may properly come before the meeting, shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. The corporation may postpone, reschedule or cancel any annual meeting previously called by the Board of Directors.

Section 2. Special Meetings. Subject to the rights of the holders of any class or series of capital stock having a preference over the common stock as to dividends or upon liquidation, special meetings of stockholders of the corporation may be called only upon the request of the Chairman of the Board or the Chief Executive Officer and approved by a resolution adopted by the Board of Directors. The corporation may postpone, reschedule or cancel any special meeting previously called by the Board of Directors.

Section 3. Place of Meeting. The Board of Directors may designate any place, either within or without the State of Delaware, as the place of meeting for any annual meeting, or for any special meeting called pursuant to ARTICLE I, Section 2, above; provided that the Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "Delaware General Corporation Law"). If no designation is made, or if a special meeting shall be otherwise called, the place of meeting shall be the principal office of the corporation.

Section 4. Notice of Meeting.

(a) Except as otherwise required by the law of Delaware, written notice stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to

notice of the meeting) and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered, personally or by mail or, as provided below, by means of electronic transmission, not less than ten (10) nor more than sixty (60) days before the date of the meeting.

(b) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholder may be given by a form of electronic transmission consented to by the stockholders to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked (1) if the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent and (2) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. For purposes of these By-laws, unless the context otherwise requires, the following terms shall have the following meanings: (i) "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process; (ii) "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information); (iii) "electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered..

(c) Notice shall be deemed given, if mailed, when deposited in the United States mail, addressed to the stockholder at his address as it appears on the stock record books of the corporation, with postage thereon prepaid. Notice given by electronic transmission

shall be deemed given: (1) if by facsimile, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by posting on an electronic network together with a separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) by any other form of electronic transmission, when directed to the stockholder.

(d) An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given, whether by a form of electronic transmission or otherwise, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 5. Fixing of Record Date.

(a) For the purpose of determining stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors of the corporation may fix a record date for any such determination of stockholders, such date in any case not to precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, be not more than sixty (60) nor less than ten (10) days prior to the date of any proposed meeting of stockholders. If the Board of Directors 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 of Directors 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. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for 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. When a determination of stockholders entitled to vote at any meeting of stockholders has been made as provided in this Section, such determination shall be applied to any adjournment thereof.

(b) For the purpose of determining stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or in order to make a

determination of stockholders for any other lawful purpose, the Board of Directors of the corporation may fix a date as the record date for any such determination of stockholders, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action.

Section 6. **Quorum; Adjournments**. A majority of the outstanding voting power of capital stock of the corporation issued and outstanding and entitled to vote thereat, represented in person or by proxy, shall constitute a quorum at a meeting of stockholders, except as provided by the law of Delaware, by the Certificate of Incorporation or by these By-laws. The stockholders present at any duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of sufficient stockholders to render the remaining stockholders less than a quorum. Whether or not a quorum is present, either the chairman of the meeting or the holders of a majority of the voting power of the shares of capital stock entitled to vote thereat, present in person or by proxy, shall have power to adjourn the meeting from time to time to reconvene at the same or another place (or by means of remote communications), without notice other than announcement at the meeting of the time and place, if any, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting. Any adjourned meeting may reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors 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.

Section 7. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy, in any manner permitted by law, including, without limitation, 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. No such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the corporation a revocation of the proxy or a new proxy bearing a later date. A proxy is not revoked by the death or incapacity of the maker unless, before the vote is counted, written notice of such death or incapacity is received by the Secretary of the corporation.

Section 8. Voting of Shares. At each meeting of stockholders, every stockholder entitled to vote thereat shall be entitled to vote in person or by a duly authorized proxy, which proxy may be appointed by an instrument in writing executed by such stockholder or his duly authorized attorney or through electronic means, if applicable, such as the internet. Subject to the provisions of applicable law and the corporation's Certificate of Incorporation, each holder of common stock shall be entitled to one (1) vote for each share of stock standing registered in his name at the close of business on the day fixed by the Board of Directors as the record date for the determination of the stockholders entitled to vote at such meeting.

Section 9. List of Stockholders. The officer who has charge of the stock ledger 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; provided, that 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 at least ten (10) days prior to the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting or (ii) during ordinary business hours at the principal place of business of the corporation. If the meeting is to be held at a place, then a list of stockholders entitled to

vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined 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. Except as otherwise provided by law, the stock ledger shall be the only evidence as to who are the stockholders entitled (i) to exercise the rights in accordance with Delaware law to examine the stock ledger, the list of stockholders required by this Section 9 or the books and records of the corporation or (ii) to vote in person or by proxy at any meeting of stockholders.

Section 10. Waiver of Notice by Stockholders. Whenever any notice is required to be given to any stockholder of the corporation under the provisions of these By-laws or the Certificate of Incorporation or any statute, a waiver thereof in writing or by electronic transmission, whether before or after the time of meeting, by the stockholder entitled to such notice, shall be deemed equivalent to the giving of such notice.

Section 11. Advance Notice of Stockholder-Proposed Business at Annual Meetings.

(a) No business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 12 or Section 12a of ARTICLE I of these By-laws, as applicable) may be transacted at an annual meeting of stockholders, other than business that is either (i) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) otherwise properly brought before the annual meeting by or at the direction of the Board of Directors (or any duly authorized committee thereof), or (iii) otherwise properly brought before the annual meeting by any stockholder of the corporation present in person (A) who is a stockholder of record or a Qualified Representative (as defined below) of a stockholder of record on the date of the giving of the notice provided for in this Section 11 and on the record date for the determination of stockholders entitled to notice of and to vote at such annual meeting and (B) who complies with the notice procedures set forth in this Section 11. For purposes of this Section 11, "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the corporation, or a Qualified Representative of such proposing

stockholder, appear at such annual meeting. A "Qualified Representative" of such a proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person 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; provided, however, that if the stockholder is (1) a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership shall be deemed a Qualified Representative, (2) a corporation or a limited liability company, any officer or person who functions as the substantial equivalent of an officer of the corporation or limited liability company or any officer, director, general partner or person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company shall be deemed a Qualified Representative.

(b) In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the corporation.

(c) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so 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 the annual meeting or, if later, the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public announcement of the date of the annual meeting was made, whichever first occurs. In no event shall any adjournment or postponement of an annual meeting or the public 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 written form, a stockholder's notice to the Secretary must set forth as to each matter such stockholder proposes to bring before the annual

meeting (i)(A) a brief description of the proposal or business desired to be brought before the annual meeting, the reasons for such proposal or conducting such business at the annual meeting and any material interest in such proposal or business of such stockholder and any Stockholder Associated Person (as defined below), individually or in the aggregate, including any anticipated benefit to the stockholder or the Stockholder Associated Person therefrom, and (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 Certificate of Incorporation or By-laws of the corporation, the text of the proposed amendment); (ii) the name and address of such stockholder as they appear on the corporation's books, and of such Stockholder Associated Person, (iii) as to the stockholder giving the notice and any Stockholder Associated Person, (A) the class, series and number of all shares of stock of the corporation which are owned by such stockholder and by such Stockholder Associated Person, if any, (B) the nominee holder for, and number of, shares owned beneficially but not of record by such stockholder and by any such Stockholder Associated Person, and (C) (1) 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 such stockholder or any Stockholder Associated Person 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, (2) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any shares of any security of the corporation, (3) any short interest of such stockholder or Stockholder Associated Person in any security of the corporation (for purposes of this By-law a person shall be deemed to have a short interest in a security if such person directly or indirectly, through any contract, 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), (4) any rights to dividends on the shares of the corporation owned beneficially by such stockholder or Stockholder Associated Person that are separated or separable from the underlying shares of the corporation, (5) any proportionate

interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (6) any performance-related fees (other than an asset-based fee) that such stockholder or Stockholder Associated Person is entitled to based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including without limitation any such interests held by members of such stockholder's or Stockholder Associated Person's immediate family sharing the same household (which information shall be supplemented by such stockholder and Stockholder Associated Person not later than 10 days after the record date for the meeting to disclose such ownership as of the record date) (the information described in this subsection C being the "Stock Related Interests"), (iv) as to the stockholder giving the notice and any Stockholder Associated Person covered by clause (iii) of this paragraph, the name and address of such stockholder, as they appear on the corporation's stock ledger, and current name and address, if different, and of such Stockholder Associated Person; (v) a description of all proxies, contracts, arrangements, understandings, or relationships between such stockholder or Stockholder Associated Person and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; (vi) a representation that such stockholder is a stockholder of record of stock of the corporation entitled to vote at such meeting and intends to appear in person or by proxy at the annual meeting to bring such business before the meeting; (vii) a representation as to whether the stockholder or Stockholder Associated Person, if any, intends, or is, or intends to be part of a group that intends, (A) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Company's outstanding capital stock required to approve or adopt the proposal and/or (B) otherwise to solicit proxies or votes from stockholders in support of such proposal; (viii) any material pending or threatened legal proceeding in which such stockholder or Stockholder Associated Person is a party or material participant involving the corporation or any of its officers or directors, or any affiliate of the corporation; (ix) any other material relationship between such stockholder or Stockholder Associated Person, on the one hand, and the corporation, any affiliate of the corporation, on the other hand; (x) any direct or indirect material interest in any material contract or agreement of such stockholder or Stockholder Associated Person with the corporation or any affiliate of the corporation (including, in any such case, any

employment agreement, collective bargaining agreement or consulting agreement); and (xi) any other information relating to such stockholder or Stockholder Associated 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 stockholder in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (d) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a proposing stockholder solely as a result of being the stockholder directed to prepare and submit the notice required by these By-laws on behalf of a beneficial owner. A proposing stockholder shall update and supplement its notice to the corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 11(d) shall be true and correct in all material respects as of the record date for stockholders entitled to vote at the meeting and as of the close of business on 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 at the principal executive offices of the corporation not later than three (3) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than five (5) 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). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other section of these By-laws shall not limit the corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders. For purposes of these By-laws, "public announcement" shall mean disclosure in a press release reported by a national news service or in a document publicly filed or furnished by the corporation with the Securities and Exchange

Commission pursuant to Section 13, 14 or 15(b) of the Securities Exchange Act of 1934, as amended (the "Exchange Act") and the rules and regulations promulgated thereunder, and the meaning of the term "group" shall be within the meaning ascribed to such term under Section 13(d)(3) of the Exchange Act.

(e) Notwithstanding anything in these By-laws to the contrary, no business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 12 or Section 12a of ARTICLE I of these By-laws, as applicable) shall be conducted at the annual meeting except business brought before the annual meeting in accordance with the procedures set forth in this Section 11; provided, however, that, once business has been properly brought before the annual meeting in accordance with such procedures, nothing in this Section 11 shall be deemed to preclude discussion by any stockholder of any such business. If the chairman of an annual meeting determines that business was not properly brought before the annual meeting in accordance with the foregoing procedures, the chairman shall declare to the meeting that the business was not properly brought before the meeting and such business shall not be transacted. Notwithstanding the foregoing provisions of this Section 11, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-law; provided, however, that any references in these By-laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to business or proposals to be considered pursuant to this By-law. Nothing in this By-law shall be deemed to affect any rights of stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act. The provisions of this Section 11 shall also govern what constitutes timely notice for purposes of Rule 14a-4(c) of the Exchange Act.

(f) For purposes of this Section 11 and of Section 12 of this ARTICLE I, "Stockholder Associated Person" of any stockholder shall mean (i) any person controlling, directly or indirectly, or acting in concert with, such stockholder, (ii) any beneficial owner of shares of stock of the corporation owned of record or beneficially by such stockholder and (iii) any person controlling, controlled by or under common control with such Stockholder Associated Person.

Section 12. Procedure for Nomination of Directors.

(a) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the corporation, except as may be otherwise provided in Section 12a of ARTICLE I these By-laws or the Certificate of Incorporation with respect to the right of holders of preferred stock of the corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders called for the purpose of electing directors, (i) by or at the direction of the Board of Directors (or any duly authorized committee thereof), (ii) by any stockholder of the corporation present in person (A) who is a stockholder of record or a Qualified Representative of a stockholder of record on the date of the giving of the notice provided for in this Section 12 and on the record date for the determination of stockholders entitled to notice of and to vote at such meeting and (B) who complies with the notice procedures set forth in this Section 12, or (iii) by any stockholder of the corporation who complies with the requirements of Section 12a of ARTICLE I of these By-laws. For purposes of this Section 12, "present in person" shall mean that the stockholder making the nomination, or a Qualified Representative of such stockholder, appear at such meeting.

(b) In addition to any other applicable requirements, for a nomination to be made by a stockholder, such stockholder must have given timely notice thereof in proper written form to the Secretary of the corporation.

(c) To be eligible to be a nominee for election or reelection as a director of the corporation, the prospective nominee (whether nominated by or at the direction of the Board of Directors or by a stockholder in accordance with this Section 12), or someone acting on such prospective nominee's behalf, must deliver (in the case of a nominee nominated by a stockholder, in accordance with any applicable time periods prescribed for delivery of notice under this By-law) to the Secretary at the principal executive offices of the corporation, a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon request). The prospective nominee must also provide a written representation and agreement, in the form provided by the Secretary upon written request, that such prospective nominee: (i) will abide by the requirements of Section 13(b)(ii) of ARTICLE I of these By-laws, (ii) consents to being named in the corporation's proxy

statement and form of proxy as a nominee and agrees, if elected, to serve as a member of the Board of Directors for the entire term and to adhere to the Corporation's Corporate Governance Guidelines, Code of Business Conduct, confidentiality, stock ownership, trading and any other corporation policies and guidelines applicable to directors; and (iii) is not and will not become a party to (A) any compensatory, payment, indemnification or other financial agreement, arrangement or understanding with any person or entity in connection with such person's nomination, candidacy, service or action as director of the corporation that has not been fully disclosed therein, (B) any agreement, arrangement or understanding with any person or entity as to how such prospective nominee would vote or act on any issue or question as a director (a "Voting Commitment") that has not been fully disclosed to the corporation therein or (C) any Voting Commitment that could limit or interfere with such prospective nominee's ability to comply, if elected as a director of the corporation, with his or her fiduciary duties under applicable law. For purposes of this Section 12, a "nominee" shall include any person being considered to fill a vacancy or a newly-created directorship on the Board of Directors.

(d) To be timely, a stockholder's notice to the Secretary must be delivered to or mailed and received at the principal executive offices of the corporation (i) in the case of an annual meeting, not less than ninety (90) days nor more than one hundred twenty (120) days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is more than thirty (30) days before or more than sixty (60) days after such anniversary date, notice by the stockholder in order to be timely must be so 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 the annual meeting or, if later, the tenth (10th) day following the day on which such notice of the date of the annual meeting was mailed or such public announcement of the date of the annual meeting was made, whichever first occurs; and (ii) in the case of a special meeting of stockholders called for the purpose of electing directors, not earlier than the close of business on the one hundred twentieth (120th) day prior to the date of such special meeting and not later than the close of business on the tenth (10th) day following the day on which notice of the date of the special meeting was mailed or public announcement of the date of the special meeting was made, whichever first occurs. In no event shall any adjournment or postponement of an annual 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.

(e) To be in proper written form, a stockholder's notice to the Secretary must set forth (i) as to each person whom the stockholder proposes to nominate for election as a director (A) the name, age, business address and residence address of the person, (B) the principal occupation or employment of the person, (C) the class or series and number of shares of capital stock of the corporation which are owned beneficially or of record by the person, (D) any material pending or threatened legal proceeding in which such stockholder or Stockholder Associated Person is a party or material participant involving the corporation or any of its officers or directors, or any affiliate of the corporation and any other information relating to the person that would be 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 pursuant to Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder and (E) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among such stockholder and Stockholder Associated Person, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the stockholder making the nomination and any Stockholder Associated Person, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; (ii) as to the stockholder giving the notice and any Stockholder Associated Person, (A) the name and address of such stockholder, as they appear on the corporation's books, and of such Stockholder Associated Person, (B) the class, series and number of all shares of stock of the corporation which are owned by such stockholder and by such Stockholder Associated Person, if any, (C) the nominee holder for, and number of, shares owned beneficially but not of record by such stockholder and by any such Stockholder Associated Person, (D) the Stock Related Interests of such stockholder and any Stockholder Associated Person, (E) a description of all proxies, contracts, arrangements, understandings or relationships between such stockholder or any such

Stockholder Associated Person and each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made by such stockholder, (F) as to the stockholder giving the notice, a representation that such stockholder is a stockholder 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 nominate the persons named in its notice, (G) any other information relating to the stockholder giving the notice and any such Stockholder Associated Person that would be 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 of the Exchange Act and the rules and regulations promulgated thereunder; (iii) a representation as to whether the stockholder or Stockholder Associated Person intends, or is or intends to be part of a group that intends, (A) 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 elect the nominee and/or (B) otherwise to solicit proxies or votes from stockholders in support of such nomination. At the request of the Board of Directors, any person nominated by the Board of Directors for election as a director shall furnish to the Secretary that information required to be set forth in a stockholder's notice of nomination which pertains to the nominee. Such notice must be accompanied by a written consent of each proposed nominee to being named as a nominee and to serve as a director if elected for the entire term; provided, however, that the disclosures required by this paragraph (e) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a proposing stockholder solely as a result of being the stockholder directed to prepare and submit the notice required by these By-laws on behalf of a beneficial owner. A proposing stockholder shall update and supplement its notice to the corporation of its intent to propose a nomination at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 12(e) shall be true and correct in all material respects as of the record date for stockholders entitled to vote at the meeting and as of the close of business on 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 at the principal executive offices of the corporation not later than three (3) business days after the record date for stockholders entitled to vote at the meeting (in the case of the update and supplement required to be made as of such record date), and not later than five (5) 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). A candidate for nomination as a director shall further update and supplement the materials delivered pursuant to this Section 12, if necessary, so that the information provided or required to be provided pursuant to this Section 12 shall be true and correct in all material respects as of the record date for stockholders entitled to vote at the meeting and as of the date that is ten (10) business days prior to the meeting or two (2) business days in the case of an update and supplement for 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). For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other section of these By-laws shall not limit the corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or enable or be deemed to permit a stockholder who has previously submitted notice hereunder to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business or resolutions proposed to be brought before a meeting of the stockholders.

(f) The corporation may require any proposed nominee to furnish such other information 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 that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of such nominee. Additionally, a candidate's nomination may be subject to a customary due diligence process, including a customary background investigation, to confirm, among other things, that (1) such nominee has not been convicted in a criminal proceeding (excluding traffic violations and other minor offenses); and (2) such nominee has not been the subject of any order, judgment or decree not subsequently reversed, suspended or vacated of any court of competent jurisdiction or any administrative body (including the Securities and Exchange Commission (the "SEC")), permanently or temporarily enjoining, or otherwise limiting in a material way, such candidate for nomination from engaging in any business activity as a result of any violation by such person of federal or state securities laws, or is otherwise prohibited or disqualified from serving as a director of the corporation pursuant to any rule or regulation of the SEC or the rules

of the securities exchange on which the corporation's securities are listed or by applicable law. Notwithstanding anything in this By-law to the contrary, in the event that the number of directors to be elected to the Board of Directors of the corporation at an annual meeting is increased effective after the time period for which nominations would otherwise be due under this Section 12 and there is no public statement naming all 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 By-law shall also be considered timely, but only with respect to nominees for such 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 announcement is first made by the corporation.

(g) No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this Section 12 or in Section 12a of ARTICLE I of these By-laws. If the Chairman of the meeting determines that a nomination was not made in accordance with such procedures, the Chairman shall declare to the meeting that the nomination was defective and such defective nomination shall be disregarded. Notwithstanding the foregoing provisions of this Section 12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this By-law; provided, however, that any references in these By-laws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the requirements applicable to nominations to be considered pursuant to this By-law. Nothing in this Section 12 shall be deemed to affect any rights of the holders of any series of preferred stock of the corporation to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

Section 12a. Stockholder Nominations Included in the Corporation's Proxy Statement.

(a) Subject to the provisions of this Section 12a, the corporation will include in its proxy statement and on its form of proxy and ballot for an annual meeting of stockholders at which directors are to be elected, the name of any nominee for election to the Board of Directors submitted for inclusion in the corporation's proxy materials (a "Stockholder

Nominee") by an Eligible Stockholder (as defined below), and will include in its proxy statement the Required Information (as defined below), if:

(i) the Stockholder Nominee is identified in a timely notice (the "Proxy Access Notice") that satisfies this Section 12a and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder;

(ii) the Eligible Stockholder expressly elects at the time of the delivery of the Proxy Access Notice to have the Stockholder Nominee included in the corporation's proxy materials pursuant to this Section 12a; and

(iii) the additional requirements of these By-laws are met.

(b) To qualify as an "Eligible Stockholder," a stockholder, or a group of stockholders as described in Section 12a(c) hereof, must:

(i) as of the date of the Proxy Access Notice, own and have owned (as defined below), continuously for at least three years, a number of shares that represents at least 3% of the outstanding shares of common stock of the corporation that are entitled to vote in the election of directors (the "Required Shares"); and

(ii) thereafter continue to own the Required Shares through the annual meeting of stockholders.

(c) For purposes of satisfying the ownership requirements of Section 12a(b) hereof: (i) a group of no more than 20 stockholders and/or beneficial owners may aggregate the number of shares of common stock that each group member has owned continuously for at least three years as of the date of the Proxy Access Notice; (ii) two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by a single employer or (C) a "group of investment companies" as defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, shall be treated as one stockholder or beneficial owner, (iii) no shares may be attributed to more than one Eligible Stockholder and (iv) no stockholder or beneficial owner, individually or as a member of a group, may qualify as more than one Eligible Stockholder. Whenever an Eligible Stockholder consists of a group of stockholders and/or beneficial owners, all requirements and obligations for an Eligible Stockholder set forth in this Section 12a must be satisfied by and with respect to each such stockholder or beneficial owner, except that shares

may be aggregated as specified in this Section 12a(c) and except as otherwise provided in this Section 12a.

(d) For purposes of this Section 12a:

(i) An Eligible Stockholder "owns" only those outstanding shares of common stock of the corporation in which such person has both (A) the full voting and investment rights and (B) the full economic interest (including the opportunity for profit and risk of loss); provided that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares (1) purchased or sold by such person or any of its affiliates in any transaction that has not been settled or closed, (2) sold short by such person, (3) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell or (4) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement, arrangement, understanding or relationship entered into by such person or any of its affiliates that has or is intended to have the purpose or effect of (x) reducing in any manner, to any extent or at any time in the future, such person's or any of its affiliates' full right to vote or direct the voting of any such shares and/or (y) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or any of its affiliates. The terms "owned," "ownership" and other variations of the word "own" shall have corresponding meanings. The term "affiliate" shall have the meaning specified in the rules and regulations under the Exchange Act.

(ii) An Eligible Stockholder "owns" shares held in the name of a nominee or other intermediary as long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. The person's ownership of shares shall be deemed to continue during any period in which the person has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement that is revocable at any time by the person.

(iii) An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the person has loaned such shares, provided that the person has the power to recall the loaned shares on no more than five business days' notice, has recalled such loaned shares as of the date of the Proxy Access Notice and such shares remain recalled and otherwise owned through the date of the annual meeting.

(iv) The Board of Directors shall determine whether any outstanding shares of the corporation's common stock are "owned" for purposes of this Section 12a.

(e) For purposes of this Section 12a, the "Required Information" that the corporation will include in its proxy statement is:

(i) the information concerning each Stockholder Nominee and the Eligible Stockholder that the corporation determines is required to be disclosed in the corporation's proxy statement by the rules or regulations of the Securities and Exchange Commission or other applicable law, regulation or listing standard.

(ii) if the Eligible Stockholder so elects, a written statement of the Eligible Stockholder (or, in the case of a group, a written statement of the group), not to exceed 500 words per Stockholder Nominee, in support of the Eligible Stockholder's Stockholder Nominee(s), which must be provided at the same time as the Proxy Access Notice for inclusion in the corporation's proxy statement for the annual meeting (the "Supporting Statement"); and

(iii) any other information that the corporation determines in its discretion to include in the proxy materials relating to any Eligible Stockholder or Stockholder Nominee, including without limitation any statements in opposition to the nomination of a Stockholder Nominee or any information provided pursuant to this Section 12a.

Notwithstanding anything to the contrary contained in this Section 12a, the corporation may omit from its proxy materials any information or Supporting Statement if the Board of Directors determines that such information (A) is untrue in any material respect or omits a material fact necessary to make the statements made not misleading, (B) directly or indirectly impugns the character, integrity or personal reputation of, or directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations by, any person or entity without factual foundation or (C) would violate any applicable law, rule, regulation or listing standard.

The corporation may solicit against any Stockholder Nominee and include in its proxy materials its own statements relating to any Stockholder Nominee or Eligible Stockholder.

(f) The Proxy Access Notice shall include all of the following information, representations and agreements:

(i) the information required under Section 12(e) of ARTICLE I of these By-laws in connection with the nomination of directors;

(ii) a copy of the Schedule 14N that has been or is concurrently filed with the Securities and Exchange Commission under the Exchange Act;

(iii) a statement of the Eligible Stockholder (and in the case of a group, the statement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) (A) setting forth and certifying to the number of shares of common stock the Eligible Stockholder owns and has owned (as defined in Section 12a(d) hereof) continuously for at least three years as of the date of the Proxy Access Notice and (B) agreeing to continue to own such shares through the date of the annual meeting;

(iv) a representation and warranty that each Stockholder Nominee:

(A) does not have any direct or indirect relationship with the corporation and would qualify as an independent director under the rules of the NASDAQ Stock Market LLC and any applicable rules or regulations of the Securities and Exchange Commission;

(B) would qualify as independent under the audit committee and compensation committee independence requirements of the principal stock exchange on which the corporation's common stock is listed;

(C) would qualify as a "Non-Employee Director" under Rule 16b-3 of the Exchange Act (or any successor rule);

(D) would qualify as an "outside director" for purposes of Section 162(m) of the Internal Revenue Code (or any successor provision);

(E) is not, and has not been within the past three years, an officer, director or key employee of any competitor of the corporation, which means for purposes of this clause (E), any entity that offers products or services that compete with products or services provided by the corporation; and

(F) is not and has not been subject to any event specified in Rule 506(d) of Regulation D (or any successor rule) under the Securities Act of 1933 or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act.

(v) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the corporation, setting forth the following additional agreements, representations and warranties:

(A) it will provide (1) the information required under Section 12(e) of ARTICLE I of these By-laws as of the record date, (2) notification in writing verifying the Eligible Stockholder's continuous ownership of the Required Shares as of the record date and (3) immediate notice to the corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting of stockholders;

(B) it (1) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control of the corporation and does not presently have any such intent, (2) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) the Eligible Stockholder is requesting be included in the corporation's proxy materials pursuant to this Section 12a, (3) has not engaged and will not engage in, and has not been and will not be a participant in, a solicitation within the meaning of Exchange Act Rule 14a-1(l) (without regard to the exception in Rule 14a-1(l)(2)(iv)), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board of Directors, and (4) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the corporation; and

(C) it will (jointly with all other group members if the Eligible Stockholder is a group) (1) assume all liability resulting from any legal or regulatory violation arising out of or relating to any communications by the Eligible Stockholder or any of its Stockholder Nominees with the corporation or its stockholders or any information that the Eligible Stockholder or any of its Stockholder Nominees provides to the corporation in connection with the Eligible Stockholder's efforts to elect its Stockholder Nominees pursuant to this Section 12a, (2) indemnify and hold harmless the corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses or other costs (including attorneys' fees) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the corporation or any of its directors, officers or employees arising out of or relating to any communications by the Eligible

Stockholder or any of its Stockholder Nominees with the corporation or its stockholders or any information that the Eligible Stockholder or any of its Stockholder Nominees provides to the corporation in connection with the Eligible Stockholder's efforts to elect its Stockholder Nominees pursuant to this Section 12a, (3) comply with all laws, rules, regulations and listing standards applicable to any solicitation in connection with the annual meeting, (4) file with the Securities and Exchange Commission any solicitation materials by or on behalf of the Eligible Stockholder relating to the annual meeting of stockholders, any of the corporation's directors or director nominees or any Stockholder Nominee, regardless of whether any such filing is required by rule or regulation or whether any exemption from filing is available under any rule or regulation, and (5) provide to the corporation prior to the day of the annual meeting any additional information reasonably requested by the corporation.

(vi) in the case of a nomination by a group of stockholders that constitutes an Eligible Stockholder, the designation by all group members of one group member that is authorized to act on behalf of all members of the group with respect to the nomination and related matters, including withdrawal of the nomination.

(g) To be timely under this Section 12a, the Proxy Access Notice must be received at the principal executive offices of the corporation not less than 120 days nor more than 150 days prior to the first anniversary of the date (as stated in the corporation's proxy materials) the definitive proxy statement was first mailed to stockholders in connection with the immediately preceding year's annual meeting of stockholders; provided, however, that in the event that the annual meeting is called for a date that is not within 30 days before or after such anniversary date, the Proxy Access Notice, in order to be timely, must be received not later than the close of business on the tenth day following the day on which notice of the date of the annual meeting was mailed or public disclosure of the date of the annual meeting was made, whichever occurs first. In no event shall an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a Proxy Access Notice pursuant to this Section 12a. A Proxy Access Notice shall be deemed submitted on the date on which all the information and documents required by this Section 12a (other than information and documents contemplated to be provided after the date the Proxy Access Notice is received) have been received by the corporation at its principal executive offices.

(h) An Eligible Stockholder (or in the case of a group, each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) must:

(i) within five business days after the date of the Proxy Access Notice, provide one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, verifying that the Eligible Stockholder owns and has continuously owned the Required Shares in compliance with this Section 12a;

(ii) within five business days after the record date for the annual meeting, provide one or more written statements from such record holders and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the record date;

(iii) prior to the commencement of the annual meeting, provide one or more written statements from such record holders and intermediaries verifying the Eligible Stockholder's continuous ownership of the Required Shares through the date that is five business days prior to the date of the annual meeting; and

(iv) in the case of any group of funds whose shares are aggregated for purposes of constituting an Eligible Stockholder, within five business days after the date of the Proxy Access Notice, provide to the corporation documentation reasonably satisfactory to the corporation demonstrating that the funds are under common management and investment control.

(i) Within the time period for delivery of the Proxy Access Notice, a Stockholder Nominee must deliver to the corporation at the principal executive offices of the corporation (1) an executed agreement by the Stockholder Nominee to provide to the corporation such information, including completion of the corporation's director nominee questionnaire, as the Board of Directors or its designee, acting in good faith, may request; and (2) the written representations and agreements described in Section 12(c) of ARTICLE I of these By-laws that apply to prospective nominees.

(j) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominee to the corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects

(including by omitting a material fact necessary to make the statements made not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the corporation and provide the information that is required to make such information or communication true, correct, complete and not misleading; provided that giving any such notification shall not be deemed to cure any defect or limit the corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 12a.

(k) Notwithstanding anything to the contrary contained in this Section 12a, the corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the corporation, if:

(i) the corporation receives notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in ARTICLE I, Section 12 of these By-laws;

(ii) the Eligible Stockholder or Stockholder Nominee breaches any of its agreements, representations or warranties set forth in the Proxy Access Notice (or otherwise submitted pursuant to this Section 12a) in any material respect, any of the information in the Proxy Access Notice (or otherwise submitted pursuant to this Section 12a) was not, when provided, true, correct and complete in all material respects, or the Eligible Stockholder or Stockholder Nominee otherwise fails to comply with the requirements of this Section 12a in any material respect; or

(iii) the Eligible Stockholder (or a duly authorized representative of the Eligible Stockholder) does not appear at the annual meeting of stockholders to present the nomination submitted pursuant to this Section 12a.

An Eligible Stockholder may not cure any defect preventing the nomination of a Stockholder Nominee after the last day on which a Proxy Access Notice would be timely.

(l) The maximum number of Stockholder Nominees submitted by all Eligible Stockholders that may be included in the corporation's proxy materials with respect to an annual meeting of stockholders pursuant to this Section 12a shall not exceed the greater of two or the largest whole number that does not exceed 20% of the total number of directors in

office as of the last day on which a Proxy Access Notice may be timely delivered pursuant to this Section 12a with respect to the annual meeting; provided that the maximum number shall be reduced by (i) any Stockholder Nominee whose name was submitted for inclusion in the corporation's proxy materials pursuant to this Section 12a but whom the Board of Directors decides to nominate as a Board of Directors nominee, (ii) any directors in office or director nominees who in either case will be included in the corporation's proxy materials for the annual meeting as an unopposed (by the corporation) nominee pursuant to an agreement, arrangement or other understanding between the corporation and a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of capital stock from the corporation by such stockholder or group of stockholders), and (iii) any nominees who were previously elected to the Board of Directors as Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at the annual meeting by the Board of Directors as a Board of Directors nominee. In the event that one or more vacancies occurs for any reason after the date of the Proxy Access Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 12a exceeds the maximum number, the corporation shall determine which Stockholder Nominees shall be included in the corporation's proxy materials in accordance with the following provisions: each Eligible Stockholder will select one Stockholder Nominee for inclusion in the corporation's proxy materials until the maximum number is reached, selecting in order of the amount (largest to smallest) of shares of the corporation each Eligible Stockholder disclosed as owned in its Proxy Access Notice submitted to the corporation. If the maximum number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, the selection process will continue as many times as necessary, following the same order each time, until the maximum number is reached.

(m) Any Stockholder Nominee who is included in the corporation's proxy materials for an annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, or (ii) receives a vote of less than 25% of the shares of common stock represented at the annual meeting in person or

by proxy and entitled to vote in the election of directors, will be ineligible to be a Stockholder Nominee pursuant to this Section 12a for the next two annual meetings.

(n) The Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 12a and to make any and all determinations necessary or advisable to apply this Section 12a to any persons, facts or circumstances, in each case acting in good faith. Any such determination shall be final and binding on the corporation, any Eligible Stockholder, any Stockholder Nominee and any other person.

Section 13. Stockholder Voting.

(a) Except as otherwise provided by the Certificate of Incorporation, these By-laws, applicable law, and the rules and regulations of any stock exchange applicable to the corporation or pursuant to any other regulation applicable to the corporation or its securities, directors shall be elected in the manner described in paragraph (b) below; and all other questions brought before any meeting of stockholders at which a quorum is present shall be determined by the affirmative vote of a majority of the votes cast with respect to that question (for purposes of this By-law, votes cast shall exclude "abstentions" and any "broker non-votes" with respect to that question to be voted on). In all matters, votes cast in accordance with any method adopted by the corporation shall be valid so long as such method is permitted under Delaware law.

(b) (i) Except as otherwise provided by these By-laws, each director shall be elected by the vote of the majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. For purposes of this By-law, a majority of votes cast shall mean that the number of votes cast "for" a director's election exceeds the number of votes cast "against" that director's election. Votes cast shall exclude "abstentions" and any "broker non-votes" with respect to that director's election. Notwithstanding the foregoing, in the event of a contested election of directors, directors shall be elected by the vote of a plurality of the votes present in person or represented by proxy at any meeting for the election of directors at which a quorum is present. For purposes of this By-law, a contested election shall mean any election of directors in which the number of candidates for election as directors exceeds the number of directors to be elected, with the determination that an election is "contested" to be made by the Secretary within thirty (30) days following the close of the later of the notice of nomination periods set forth in Section 12 and Section 12a of ARTICLE

I of these By-laws, based on whether one or more notices of nomination were timely filed in accordance with Section 12 or Section 12A of ARTICLE I of these By-laws (provided that the determination that an election is a "contested election" shall be determinative only as to the timeliness of a notice of nomination and not otherwise as to its validity). If, prior to the time the corporation mails its initial proxy statement in connection with such election of directors, one or more notices of nomination are withdrawn such that the number of candidates for election as director no longer exceeds the number of directors to be elected, the election shall not be considered a contested election.

(ii) In order for any incumbent director to become a nominee of the Board of Directors for further service on the Board of Directors, such person shall submit an irrevocable resignation as a member of the Board of Directors, contingent on (A) that person not receiving a majority of the votes cast in an election that is not a contested election, and (B) acceptance of that resignation by the Board of Directors in accordance with the policies and procedures set forth herein or adopted by the Board of Directors for such purpose. In the event an incumbent director fails to receive a majority of the votes cast in an election that is not a contested election, the Corporate Governance and Nominating Committee of the Board of Directors, or any committee serving the functions of the committee that is known as the Corporate Governance and Nominating Committee as of the effective date of this By-law (the "Corporate Governance Committee") shall make a recommendation to the Board of Directors as to whether to accept or reject the resignation of such incumbent director, or whether other action should be taken. The Board of Directors shall act on the resignation, taking into account the Corporate Governance Committee's recommendation, and publicly disclose (by a press release, a filing with the Securities and Exchange Commission or other broadly disseminated means of communication) its decision regarding the resignation and, if such resignation is rejected, the rationale behind the decision within 90 days from the date of the certification of the election results. The Corporate Governance Committee in making its recommendation, and the Board of Directors in making its decision, may each consider any factors or other information that it considers appropriate and relevant. The director whose resignation is being considered shall not participate in the recommendation of the Corporate Governance Committee or the decision of the Board of Directors with respect to his or her resignation. If such incumbent director's resignation is not accepted by the Board of Directors such director shall continue to serve as a member of the

Board of Directors until the next annual meeting of stockholders and until his or her successor is duly elected, or his or her earlier resignation or removal. If a director's resignation is accepted by the Board of Directors pursuant to this By-law, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board of Directors, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Section 9 of ARTICLE II of these By-laws or may decrease the size of the Board of Directors pursuant to the provisions of Section 2 of ARTICLE II of these By-laws.

(c) Any stockholder entitled to vote on any matter may vote part of such stockholder's shares in favor of the proposal and refrain from voting the remaining shares or may vote the remaining shares against the proposal; but if the stockholder fails to specify the number of shares which the stockholder is voting affirmatively or otherwise indicate how the number of shares to be voted affirmatively is to be determined, it will be conclusively presumed that the stockholder's approving vote is with respect to all shares which the stockholder is entitled to vote.

(d) Voting need not be by written ballot unless requested by a stockholder at the meeting or ordered by the chairman of the meeting; however, all elections of directors shall be by written ballot, unless otherwise provided in the Certificate of Incorporation; provided, that if authorized by the Board, a written ballot may be submitted by electronic transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the stockholder or a holder of a proxy.

Section 14. Conduct of Meetings. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board of Directors may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the

presiding person of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present, including removing any stockholder who refuses to comply with meeting procedures, rules or guidelines as established by the person presiding over the meeting; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted to questions or comments by participants, (vi) recessing or adjourning of the meeting, either by the person presiding over the meeting or the stockholders by the vote of a majority of the voting power of the stock, present in person or represented by proxy, and (vii) regulation of the voting or balloting, as applicable, including matters which are to be voted on by ballot, if any. The person presiding over the meeting shall have sole, absolute and complete authority and discretion to decide questions of compliance with the foregoing procedures and his or her ruling thereon shall be final and conclusive and binding on the corporation and its stockholders. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 15. Delivery to the Corporation. Whenever this Article I requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), such document or information shall be in writing exclusively (and not in an electronic transmission) and shall be delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested, and the corporation shall not

be required to accept delivery of any document not in such written form or so delivered. For the avoidance of doubt, the corporation expressly opts out of Section 116 of the General Corporation Law of Delaware with respect to the delivery of information and documents to the corporation required this Article I.

ARTICLE II

BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the corporation shall be managed by or under the direction of its Board of Directors. The Board of Directors may adopt, amend or repeal by-laws adopted by the Board or by the stockholders.

Section 2. Number of Directors, Tenure and Qualifications. Except as fixed pursuant to the Certificate of Incorporation, the number of members of the Board of Directors shall be not less than three (3) nor more than thirteen (13), as determined from time to time by the Board of Directors , but no decrease may shorten the term of any incumbent director. 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 a majority of the directors then in office. The directors need not be stockholders of the corporation. Each director shall hold office until the next annual meeting of stockholders and until his or her successor shall be elected and shall qualify, subject, however, to prior death, resignation, incapacitation or removal from office, in the manner provided in these By-laws, and except as otherwise required by law.

Section 3. Annual and Regular Meetings. Annual meetings of the Board of Directors for the election of officers and consideration of other matters shall be held either (a) without notice immediately after the annual meeting of stockholders and at the same place, or (b) after the annual meeting of stockholders, on notice as provided in Section 5 of this Article II. Regular meetings of the Board of Directors may be held without notice and, unless otherwise specified by the Board of Directors, shall be held in accordance with a schedule and at such locations as determined from time to time by the Board. If the day fixed for a regular meeting is a legal holiday, the meeting shall be held on the next business day.

Section 4. Special Meetings. Special meetings of the Board of Directors or of the directors who have been determined by the Board of Directors to be "independent directors" may be called by or at the request of the Chairman of the Board, the Chief Executive Officer, the

Lead Independent Director (if appointed), or by members of the Board of Directors constituting no less than the majority of the total number of directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix any place either within or without the State of Delaware, as the place for holding any special meeting of the Board of Directors called by them.

Section 5. Notice. Notice of any special meeting or the fixing or changing of the time and place of annual or regular meetings shall be sent to such director by mail addressed to each director at such director's residence or business address or provided by electronic mail, electronic board portal, facsimile, telegram, telex or other electronic transmission, or telephoned or delivered to such director personally. If such notice is sent by mail, it shall be sent not later than three days before the day on which the meeting is to be held. If such notice is provided by electronic mail, electronic board portal, facsimile, telegram, telex or other electronic transmission, it shall be provided not later than 12 hours before the time at which the meeting is to be held. If such notice is telephoned or delivered personally, it shall be received not later than 12 hours before the time at which the meeting is to be held. Such notice shall state the time and place of the meeting. Any oral notice given personally or by telephone may be communicated either to the director or to a person at the office of the director who the person giving the notice has reason to believe will promptly communicate it to the director. The requirement of notice may be waived in accordance with Section 1 of Article VII of these By-laws. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting. Notwithstanding the foregoing, the corporation shall use its commercially reasonable efforts to confirm by telephone or electronically that a director with an address as shown on the corporation's records as outside the United States has received notice of the special meeting when notice was sent by courier and/or United States first-class mail.

Section 6. Quorum. A majority of the directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. In the event a quorum is not present at a duly called meeting of the Board of Directors, a majority of the directors present at such duly called meeting may adjourn the meeting and, upon delivery of a notice in accordance with Article II, Section 5 to the director(s), reschedule such meeting for an

alternative date, and, at such rescheduled meeting, a majority of the total number of directors then in office shall constitute a quorum.

Section 7. Manner of Acting. Except as otherwise specifically provided by the law of Delaware, the Certificate of Incorporation or these By-laws, the act of the majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors.

Section 8. Organization. At each meeting of the Board of Directors, other than meetings of the non-management Directors in executive session, the Chairman of the Board or, in the Chairman's absence, (i) the Lead Independent Director (if appointed), (ii) the President, if a member of the Board of Directors, (iii) one of the Vice Chairmen of the Board who is a member of the Board of Directors, if any, in such order as may be designated by the Chairman of the Board, in that order, or (iv) in the absence of each of them, a chairman chosen by a majority of the directors present, shall act as chairman of the meeting, and the Secretary or, in the Secretary's absence, an Assistant Secretary or any employee of the corporation appointed by the chairman of the meeting, shall act as secretary of the meeting. The Chairman of the Board, if a non-management director (or the Lead Independent Director, if appointed) shall preside at meetings of the non-management directors or, in such person's absence, the non-management directors shall choose a non-management director to preside at such meetings in executive session.

Section 9. Vacancies; Resignations. Except as otherwise required by law and the Certificate of Incorporation, any vacancy on the Board of Directors that results from an increase in the number of directors shall be filled only by a majority of the Board of Directors then in office, provided that a quorum is present, and any other vacancy occurring on the Board of Directors shall be filled by a majority of the directors then in office, even if less than a quorum, or by a sole remaining director. Any director elected to fill a vacancy not resulting from an increase in the number of directors shall have the same remaining term as that of his or her predecessor. Any director may resign at any time by giving notice in writing or by electronic transmission to the Chairman of the Board, the Chief Executive Officer 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; acceptance of such resignation by the corporation shall not be required.

Section 10. Compensation. The Board of Directors, by affirmative vote of a majority of the directors, and irrespective of any personal interest of any of its members, may establish reasonable compensation of all directors for services to the corporation as directors, members of committees, officers or otherwise, or may delegate such authority to an appropriate committee. Directors shall also be reimbursed for their expenses of attending Board and committee meetings. Nothing contained herein shall preclude any director from serving the corporation in any other capacity and receiving compensation therefor.

Section 11. Committees. (a)The Board of Directors by resolution may designate one (1) or more committees, each committee to consist of one (1) or more directors elected by the Board of Directors, which to the extent permitted by law and to the extent provided in such resolution, as initially adopted, and as thereafter supplemented or amended by further resolution adopted by a like vote, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. The term of office of the members of each committee shall be as fixed from time to time by the Board; provided, however, that any committee member who ceases to be a member of the Board shall automatically cease to be a committee member.

(b) At any meeting of a committee, the presence of the majority of its members then in office (or, in the case of a committee consisting of one director, its sole member) shall constitute a quorum for the transaction of business; and the act of a majority of the members present at a meeting at which a quorum is present shall be the act of the committee; provided, however, that in the event that any member or members of the committee is or are in any way interested in or connected with any other party to a contract or transaction being approved at such meeting, or are themselves parties to such contract or transaction, the act of a majority of the members present who are not so interested or connected, or are not such parties, shall be the act of the committee. Each committee may provide for the holding of regular meetings, make provision for the calling of special meetings and, except as otherwise provided in these By-laws or by resolution of the Board of Directors, make rules for the conduct of its business.

(c) The committees shall keep minutes of their proceedings and report the same to the Board of Directors when required; but failure to keep such minutes shall not affect the validity of any acts of the committee or committees.

Section 12. Action of the Board by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors or any committee thereof may be taken without a meeting of the Board of Directors or any committee thereof if prior to such action a consent in writing or electronic transmission is given by all members of the Board or of the committee, as the case may be, and the writing or writings or electronic transmission is filed with the minutes of the proceedings of the Board or the committee.

Section 13. Conferences. Members of the Board of Directors or any committee designated by the Board may participate in a meeting of such Board or 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 participation in a meeting pursuant to this Section 13 shall constitute presence in person at such meeting.

Section 14. Additional Powers. In addition to the powers and authorities by these By-laws expressly conferred upon it, the Board of Directors may exercise all such powers of the corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the stockholders.

ARTICLE III

OFFICERS

Section 1. Number. The officers of the corporation shall consist of a Chairman of the Board and a Chief Executive Officer. The Board of Directors may appoint as officers such number of Executive or Senior Vice Presidents and Vice Presidents, a Secretary, a Treasurer, one (1) or more Assistant Treasurers, one (1) or more Assistant Secretaries, and such other officers as are created by the Board from time to time. The same person may hold two (2) or more of such offices. The Board may delegate to the Chief Executive Officer or to any committee the power to appoint and define the powers and duties of any subordinate officers (including Assistant Secretaries or Assistant Treasurers).

Section 2. Election and Term of Office. The Chairman of the Board shall be elected by the directors from among their own number; other officers need not be directors. In

addition to the powers conferred upon them by these By-laws, all officers elected or appointed by the Board of Directors shall have such authority and shall perform such duties as from time to time may be prescribed by the Board of Directors by resolution or in these By-laws (or, if appointed by an executive officer or a committee as set forth in Section 1 above, by such executive officer or committee) and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board of Directors. At least annually, the Board of Directors shall elect the officers of the corporation, and at any time thereafter the Board of Directors may elect additional officers of the corporation. Each such officer shall hold office until the officer's successor is elected and qualified or until the officer's earlier death, resignation, termination of employment or removal.

Section 3. Removal. Any officer or agent elected or appointed by the Board of Directors may be removed or suspended by a majority of members of the Board of Directors then in office, with or without cause, whenever in its judgment the best interests of the corporation will be served thereby, but such removal or suspension shall be without prejudice to the contract rights, if any, of the person so removed. Election or appointment shall not of itself create contract rights.

Section 4. Resignations. Any officer may resign at any time by giving written notice to the Chairman of the Board, the Chief Executive Officer or to the Secretary. Such resignation shall take effect upon receipt thereof or at any later time specified therein; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Vacancies. A vacancy in any office because of death, resignation, removal or any other cause may be filled for the unexpired portion of the term by the Board of Directors.

Section 6. Chairman of the Board. The Chairman of the Board shall preside at all meetings of the Board of Directors and meetings of the stockholders. The Chairman of the Board shall also perform such other duties as from time to time may be assigned to him by the Board of Directors.

Section 7. **Chief Executive Officer; President**. The Chief Executive Officer shall be the principal executive officer of the corporation and shall have the general charge of and control over the business, affairs, and personnel of the corporation, subject to the authority of

the Board of Directors. Unless some other officer has been elected President of the corporation, the Chief Executive Officer shall also be the President of the corporation. The Chief Executive Officer, as President of the corporation, may, together with the Secretary, sign all certificates for shares of the capital stock of the corporation. Except as may be specified by the Board of Directors, the Chief Executive Officer shall have the power to enter into contracts and make commitments on behalf of the corporation and shall have the right to execute deeds, mortgages, bonds, contracts and other instruments necessary or proper to be executed in connection with the corporation's regular business and may authorize any other officer of the corporation, to sign, execute and acknowledge such documents and instruments in his place and stead.

Section 8. Executive or Senior Vice President and Vice Presidents. Each Executive or Senior Vice President or Vice President shall perform such duties and have such authority as from time to time may be assigned to him by the Board of Directors (so long as such duties are, and such authority is, subordinate to the Chief Executive Officer) or the Chief Executive Officer.

Section 9. Secretary and Assistant Secretaries. The Secretary shall have custody of the seal of the corporation and of all books, records and papers of the corporation, except such as shall be in the charge of the Treasurer or some other person authorized to have custody and be in possession thereof by resolution of the Board of Directors. The Secretary shall record the proceedings of the meetings of the stockholders and of the Board of Directors in books kept by him for that purpose and may, at the direction of the Board of Directors, give any notice required by statute or by these By-laws of all such meetings. The Secretary shall, together with the President, sign certificates for shares of the capital stock of the corporation. Any Assistant Secretaries elected by the Board of Directors, in order of their seniority, shall, in the absence or disability of the Secretary, perform the duties and exercise the powers of the Secretary as aforesaid. The Secretary or any Assistant Secretary may, together with the Chief Executive Officer or any other authorized officer, execute on behalf of the corporation any contract which has been approved by the Board of Directors, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall prescribe.

Section 10. Treasurer and Assistant Treasurer. The Treasurer shall keep accounts of all moneys of the corporation received and disbursed, and shall deposit all monies and valuables of the corporation in its name and to its credit in such banks and depositories as the

Board of Directors shall designate. Any Assistant Treasurers elected by the Board of Directors, in order of their seniority, shall, in the absence or disability of the Treasurer, perform the duties and exercise the powers of the Treasurer, and shall perform such other duties as the Board of Directors or the Chief Executive Officer shall prescribe.

Section 11. Salaries. The salaries of the officers shall be fixed from time to time by the Board of Directors and no officer shall be prevented from receiving such salary by reason of the fact that he is also a director of the corporation.

Section 12. Representation in Other Companies. Except as otherwise provided by resolution of the Board of Directors, the Chief Executive Officer or a Vice President designated by the Chief Executive Officer or the Board of Directors shall have full power and authority on behalf of the corporation to attend and to act and to vote at any meetings of security holders of corporations in which the corporation may hold securities, and at such meetings shall possess and may exercise any and all rights and powers incident to the ownership of such securities, and which as the owner thereof the corporation might have possessed and exercised, if present. The Board of Directors by resolution from time to time may confer like powers upon any other person or persons.

ARTICLE IV

STOCK AND TRANSFER OF STOCK

Section 1. Shares of Stock. The shares of capital stock of the corporation shall be represented by a certificate, unless and until the Board of Directors of the corporation adopts a resolution permitting shares to be uncertificated. Notwithstanding the adoption of any such resolution providing for uncertificated shares, every holder of capital stock of the corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate for shares of capital stock of the corporation signed by the President or any Vice President and by the Secretary or any Assistant Secretary. The signatures of any such officers thereon may be facsimiles. The seal of the corporation shall be impressed, by original or by facsimile, printed or engraved, on all such certificates. The certificate shall also be signed by the transfer agent and a registrar and the signature of either the transfer agent or the registrar may also be facsimile, engraved or printed. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon any such certificate shall have ceased to be such officer, transfer agent or

registrar before such certificate is issued, such certificate may nevertheless be issued by the corporation with the same effect as if such officer, transfer agent, or registrar had not ceased to be such officer, transfer agent, or registrar at the date of its issue. To the extent that shares are represented by certificates, the certificates shall be in such form as shall be determined by the Board of Directors and shall be consecutively numbered or otherwise identified. The name and address of the person to whom the shares represented thereby are issued, with the number of shares and date of issue, shall be entered on the stock transfer books of the corporation. With respect to certificated shares of stock, all certificates surrendered to the corporation for transfer shall be canceled and no new certificate or uncertificated shares shall be issued until the former certificate for a like number of shares shall have been surrendered and canceled, except that in case of a lost, destroyed or mutilated certificate, a new certificate or uncertificated shares may be issued therefor upon such terms and indemnity to the corporation as the Board of Directors may prescribe.

Section 2. Transfer of Shares. Stock of the corporation shall be transferable in the manner prescribed by applicable law and in these By-laws. Transfers of stock shall be made on the books of the corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the corporation shall determine to waive such requirement. Prior to due presentment for registration of transfer of a certificate representing shares of capital stock of the corporation or of proper transfer instructions with respect to uncertificated shares, the corporation may treat the registered owner of such shares as the person exclusively entitled to vote, to receive notifications and otherwise to exercise all the rights and powers of an owner. Where a certificate for shares is presented to the corporation with a request to register for transfer, the corporation shall not be liable to the owner or any other person suffering loss as a result of such registration of transfer if (a) there were on or with the certificate the necessary

endorsements, and (b) the corporation had no duty to inquire into adverse claims or has discharged any such duty. The corporation may require reasonable assurance that said endorsements are genuine and effective and in compliance with such other regulations as may be prescribed under the authority of the Board of Directors.

Section 3. Terms of Preferred Stock. The provisions of these By-laws, including those pertaining to voting rights, election of directors and calling of special meetings of stockholders, are subject to the terms, preferences, rights and privileges of any then outstanding class or series of Preferred Stock as set forth in the Certificate of Incorporation and in any resolutions of the Board of Directors providing for the issuance of such class or series of Preferred Stock; provided, however, that the provisions of any such Preferred Stock shall not affect or limit the authority of the Board of Directors to fix, from time to time, the number of directors which shall constitute the number of directors then in office as provided in Article II, Section 2 above, subject to the right of the holders of any class or series of Preferred Stock to elect additional directors as and to the extent specifically provided by the provisions of such Preferred Stock.

ARTICLE V

INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS

Section 1. Definitions.

For purposes of this ARTICLE V:

(a) "Corporate Status" describes the status of a person who is serving or has served (i) as a Director of the corporation, (ii) as an Officer of the corporation, (iii) as a Non-Officer Employee or Agent of the corporation; or (iv) as a director, officer, trustee, administrator, partner, managing member, fiduciary, committee member, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise which such person is or was serving at the request of the corporation. For purposes of this Section 1(a), an Officer, Director or Non-Officer Employee or Agent of the corporation (i) who is serving or has served as a director, officer, trustee, administrator, managing member, fiduciary, committee member, employee or agent of a Subsidiary of the corporation shall be deemed to be or have been serving in such capacity at the request of the corporation or (ii) onto whom , in such

capacity, duties are imposed or who provides services in such capacity with respect to an employee benefit plan, its participants or beneficiaries shall also be deemed to be serving at the request of the corporation with respect to such duties or services; provided, that the foregoing list is intended to be illustrative not exhaustive and nothing contained therein shall serve to limit the circumstances under which a person may be determined to be serving "at the request of the corporation" for purposes of this ARTICLE V;

(b) "Director" means any person who serves or has served the corporation as a director on the Board of Directors of the corporation;

(c) "Disinterested Director" means, with respect to each Proceeding in respect of which indemnification is sought hereunder, a Director of the corporation who is not and was not a party to such Proceeding;

(d) "Expenses" means all direct and indirect costs (including without limitation attorneys' fees, retainers, court costs, transcripts, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses) actually and reasonably incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding; provided, however, for the avoidance of doubt, "Expenses" shall not include any Liabilities;

(e) "Liabilities" means any judgments, fines (including any excise taxes assessed with respect to any employee benefit plan), penalties, third party attorneys' fees, amounts paid in settlement, arbitration or mediation, or amounts forfeited or reimbursed (including all interest, assessments and other charges paid or payable in connection with or in respect of any of the foregoing), arising out of or in connection with any Proceeding; provided, however, that "Liabilities" shall not include any Expenses;

(f) "Non-Officer Employee or Agent" means any person who serves or has served as an employee or agent of the corporation, but who is not or was not a Director or Officer;

(g) "Officer" means any person who serves or has served the corporation as an officer appointed by the Board of Directors of the corporation;

(h) "Proceeding" means any threatened, pending or completed action, suit, claim, counterclaim, cross claim, hearing, arbitration or other alternate dispute resolution mechanism, proceeding, or investigation (in each case, whether formal or informal, and whether civil, criminal, regulatory, administrative, arbitrative or investigatory); and

(i) Subsidiary" shall mean any for-profit entity (other than an entity formed as a partnership), of which the corporation either (i) owns interests representing more than 50% of the voting, appointment, or designation power for the selection of a majority of: the board of directors (if a corporation) the management committee members (if a joint venture) or the members of the management board (if a limited liability company) or (ii) has the right, pursuant to written contract or the bylaws, charter, operating agreement or similar documents of such entity, to elect, appoint or designate a majority of the board of directors (if a corporation) the management committee members (if a joint venture) or the members of the management board (if a limited liability company), in each case, whether directly or indirectly through one or more other Subsidiaries.

Section 2. Indemnification of Officers and Directors.

(a) Proceedings Other Than Proceedings by or in the Right of the Corporation. Subject to the operation of Section 4 of this ARTICLE V, the corporation shall indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, any Officer or Director of the corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact of his or her Corporate Status, against any and all Expenses and Liabilities incurred by or on behalf of such person in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) Proceedings by or in the Right of the Corporation. Subject to the operation of Section 4 of this ARTICLE V, the corporation shall indemnify and hold harmless, to

the fullest extent permitted by the Delaware General Corporation Law, any Officer or Director of the corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact of his or her Corporate Status, against any and all Expenses incurred by or on behalf of such person in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect 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 Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

(c) Success on the Merits. To the extent that an Officer or Director of the corporation who was a party to any Proceeding (whether brought by or in the right of the corporation or otherwise) by reason of the fact of his or her Corporate Status has been successful on the merits or otherwise in defense of such Proceeding (or in defense of any constituent claim, charge, issue or matter therein), he or she shall be indemnified against all Expenses incurred by him or her in connection therewith.

Section 3. Indemnification of Non-Officer Employees or Agents.

(a) Proceedings Other Than Proceedings by or in the Right of the Corporation. Subject to the operation of Section 4 of this ARTICLE V, the corporation may, at the discretion of the Board of Directors of the corporation, indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, any Non-Officer Employee or Agent of the corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact of his or her Corporate Status, against any and all Expenses and Liabilities incurred by or on behalf of such person in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) Proceedings by or in the Right of the Corporation. Subject to the operation of Section 4 of this ARTICLE V, the corporation may, at the discretion of the Board of Directors of the corporation, indemnify and hold harmless, to the fullest extent permitted by the Delaware General Corporation Law, any Non-Officer Employee or Agent of the corporation who was or is a party or is threatened to be made a party to any Proceeding by reason of the fact of his or her Corporate Status, against any and all Expenses incurred by or on behalf of such person in connection with such Proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation and except that no indemnification shall be made in respect 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 Delaware Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Delaware Court of Chancery or such other court shall deem proper.

Section 4. Determination that Indemnification is Proper. Any indemnification under Section 2 or Section 3 of this ARTICLE V, other than for Expenses incurred in connection with a Proceeding with respect to which a Director or Officer has been wholly successful on the merits or otherwise pursuant to Section 2(c) of this ARTICLE V or unless ordered by a court, shall be made by the corporation only as authorized in the specific case upon a determination that indemnification of the prospective indemnitee is proper in the circumstances because the prospective indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. Such determination shall be made:

(a) by a majority vote of the Disinterested Directors, even though less than a quorum of the Board of Directors,

(b) by a committee comprised of Disinterested Directors, such committee having been designated by a majority vote of the Disinterested Directors (even though less than a quorum),

(c) if there are no such Disinterested Directors, or if a majority of Disinterested Directors so directs, by independent legal counsel in a written opinion, or

(d) by the stockholders of the corporation

Section 5. **Insurance; Indemnification Agreements**. The corporation may, but shall not be required to, supplement the rights of indemnification under this ARTICLE V with respect to any person or persons by any lawful means, including, without limitation by reason of enumeration, (i) the purchase and maintenance of insurance on behalf of any one or more of such persons, whether or not the corporation would be obligated to indemnify such person under this ARTICLE V or otherwise, and (ii) contractual agreements with any individual or group of persons providing indemnification rights to such person or persons.

Section 6. Advancement of Expenses Prior to Final Disposition.

(a) Subject to the provisions of Section 6(c), Expenses incurred by any Officer or Director in defending any Proceeding to which he or she is party by reason of his or her Corporate Status shall be paid by the corporation in advance of the final disposition of such Proceeding within thirty (30) days after receipt by the corporation of (i) a statement or statements from such person requesting such advance or advances from time to time, and (ii) an executed undertaking by or on behalf of such person to repay such amount or amounts if, and to the extent that, it shall ultimately be determined that the Officer or Director is not entitled to be indemnified by the corporation for such Expenses.

(b) Subject to the provisions of Section 6(c), the corporation may, at the discretion of the Board of Directors of the corporation and in advance of the final disposition of a Proceeding, pay Expenses incurred by any Non-Officer Employee or Agent in defending any Proceeding to which he or she is party by reason of his or her Corporate Status following receipt by the corporation of (i) a statement or statements from such person requesting such advance or advances from time to time, and (ii) an executed undertaking by or on behalf of such person to repay such amount or amounts if, and to the extent that, it shall ultimately be determined that the Non-Officer Employee or Agent is not entitled to be indemnified by the corporation for such Expenses.

(c) In the event the corporation shall be obligated pursuant to Section 6(a) of this ARTICLE V or shall elect pursuant to Section 6(b) of this ARTICLE V to advance amounts of Expenses incurred by a person with respect to a Proceeding, the corporation shall be

entitled to assume the defense of such Proceeding, with counsel reasonably acceptable to such person, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by the prospective indemnitee and the retention of such counsel by the corporation, the corporation will not be liable to the prospective indemnitee for any fees of counsel subsequently incurred by Indemnitee with respect to the same Proceeding, provided that (1) the prospective indemnitee shall have the right to employ his or her own counsel in such Proceeding at his or her expense and (2) if (i) the employment of separate counsel by the prospective indemnitee has been previously authorized in writing by the corporation, (ii) counsel to the corporation or prospective indemnitee shall have reasonably concluded that there may be a conflict of interest or position, or reasonably believes that a conflict is likely to arise, between the corporation and the prospective indemnitee with respect to any significant issue in the conduct of any such defense or (iii) the corporation shall not, in fact, have employed counsel to assume the defense of such Proceeding, then the fees and expenses of the prospective indemnitee's counsel shall be at the expense of the corporation, except as otherwise expressly provided by this ARTICLE V. The corporation shall not be entitled, without the consent of such prospective indemnitee, to assume the defense of any claim brought by or in the right of the corporation or as to which counsel for the corporation or prospective indemnitee shall have reasonably made the conclusion provided for in clause (ii) above. The corporation shall not settle any Proceeding (in whole or in part) as to which it has assumed the defense pursuant to this Section 6(c) in any manner which would impose any Expense, judgment, Liability or limitation on such prospective indemnitee without his or her prior written consent, such consent not to be unreasonably withheld.

Section 7. Rights Not Exclusive. The rights to indemnification and advancement of expenses provided by this ARTICLE V to any person shall be not deemed exclusive of any other right to which such person may be entitled under Section 145 of the General Corporation Law of the State of Delaware (or any successor provision) or otherwise under applicable law, under the corporation's Certificate of Incorporation, under any agreement, pursuant to any vote of stockholders or directors, or otherwise, whether as to action in his or her Corporate Status or as to action in another capacity while holding such Corporate Status and shall continue as to a person who has ceased his or her Corporate Status and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8. Severability. To the extent that any court of competent jurisdiction shall determine that the indemnification provided under this ARTICLE V shall be invalid as applied to a particular claim, issue or matter, the provisions hereof shall be deemed amended to allow indemnification to the maximum extent permitted by law.

Section 9. Other Indemnification. The corporation's obligation, if any, to indemnify any person under this ARTICLE V with respect to any Expenses or Liabilities shall be reduced by any amounts collected by or on behalf of such person from any third party with respect to such Expenses or Liabilities, including, without limitation, from the proceeds of any applicable policy of insurance or amounts paid pursuant to rights of indemnification or contribution.

Section 10. Modification. This ARTICLE V shall be deemed to be a contract between the corporation and each previous, current or future Director, Officer or Non-Officer Employee or Agent of the corporation. The provisions of this ARTICLE V shall be applicable to all Proceedings commenced after the adoption hereof, whether arising from any actual or alleged action taken or failure to act occurring before or after such adoption. No amendment, modification or repeal of this ARTICLE V shall diminish the rights provided hereby or diminish the right to indemnification with respect to any Proceeding or any constituent claim, issue or matter in any then pending or subsequent Proceeding which is based in any material respect from any alleged action or failure to act prior to such amendment, modification or repeal.

ARTICLE VI

EXCLUSIVE FORUM

(a) Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee or stockholder of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim against the corporation or any director or officer or other employee of the corporation arising pursuant to any provision of the Delaware General Corporation Law or the corporation's Certificate of Incorporation or By-laws (as either may be amended from time to time), (iv) any action to interpret, apply, enforce or

determine the validity of the corporation's Certificate of Incorporation or By-laws or (v) any action asserting a claim governed by the internal affairs doctrine, shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware). Notwithstanding the foregoing, the provisions of this paragraph (a) of Article VI shall not apply to suits brought to enforce any liability or duty created by the Securities Act of 1933, as amended (the "Securities Act"), the Exchange Act or any other claim for which the federal courts of the United States have exclusive jurisdiction.

(b) Unless the corporation consents in writing to the selection of an alternative forum, to the fullest extent permitted by law, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act, the Exchange Act, or any other claim for which the federal courts of the United States have exclusive jurisdiction.

ARTICLE VII

MISCELLANEOUS

Section 1. Waiver of Notice. Whenever notice is required to be given pursuant to the law of Delaware, the Certificate of Incorporation or these By-laws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting of stockholders or the Board of Directors or a committee thereof shall constitute a waiver of notice of such meeting, except when the stockholder or director attends such meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders or the Board of Directors or committee thereof need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or by these By-laws.

Section 2. Construction; Definitions. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the Delaware General Corporation Law shall govern the construction of these By-laws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the

singular, the term "person" means any individual, general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity, and the masculine gender includes the feminine gender and vice versa.

Section 3. Provisions Additional to Provisions of Law. All restrictions, limitations, requirements and other provisions of these By-laws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

Section 4. Provisions Contrary to Provisions of Law. Any article, section, subsection, subdivision, sentence, clause or phrase of these By-laws which upon being construed in the manner provided in Section 2 of this Article VII, shall be contrary to or inconsistent with any applicable provisions of law, shall not apply so long as said provisions of law shall remain in effect, but such result shall not affect the validity or applicability of any other portions of these By-laws, it being hereby declared that these By-laws would have been adopted and each article, section, subsection, subdivision, sentence, clause or phrase thereof, irrespective of the fact that any one or more articles, sections, subsections, subdivisions, sentences, clauses or phrases is or are illegal.

Section 5. Delivery of Notice; Notice by Electronic Transmission. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provisions of the Delaware General Corporation Law, the Certificate of Incorporation or by these By-laws may be given in writing directed to the stockholder's mailing address (or by electronic transmission directed to the stockholder's electronic mail address, as applicable) as it appears on the records of the corporation and shall be given (1) if mailed, when the notice is deposited in the U.S. mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (3) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail. A notice by electronic mail must include a prominent legend that the communication is an

important notice regarding the corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of the Delaware General Corporation Law, the Certificate of Incorporation or by these By-laws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice or electronic transmission to the corporation. Notwithstanding the provisions of this paragraph, the corporation may give a notice by electronic mail in accordance with the first paragraph of this section without obtaining the consent required by this paragraph. Any notice given pursuant to this paragraph shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (ii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (iii) if by any other form of electronic transmission, when directed to the stockholder. Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (x) the corporation is unable to deliver by such electronic transmission two (2) consecutive notices given by the corporation and (y) such inability becomes known to the Secretary or an Assistant Secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice, provided, however, the inadvertent failure to discover such inability shall not invalidate any meeting or other action. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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DENTSPLY SIRONA INC.
KEY EMPLOYEE SEVERANCE BENEFITS PLAN

(Effective as of May 25, 2022)

ARTICLE 1.
INTRODUCTION

1.1. Establishment, Effective Date and Purpose. Dentsply Sirona Inc. (the "Company") has adopted the Dentsply Sirona Inc. Key Employee Severance Benefits Plan (the "Plan") effective as of May 25, 2022. The Plan is generally designed to provide separation pay and benefits to certain eligible employees of the Company whose employment is involuntarily terminated by the Company without Cause (as defined in Section 2.1(h) below) or voluntarily resignation for Good Reason (as defined in Section 2.1(x) below) by the Employee, as further set forth in this Plan.

1.2. Administration. The Plan shall be administered by the Human Resource Committee of the Board of Directors of the Company.

ARTICLE 2.
DEFINITIONS AND CONSTRUCTION

2.1. Definitions. For purposes of the Plan, the following words and phrases shall have the respective meanings set forth below, unless the context clearly requires a different meaning:

(a) "Accrued Benefits" means:

(i) Base Salary earned through the date of the Qualified Termination;

(ii) the balance of any awarded, but as yet unpaid, annual incentive for any fiscal year prior to the fiscal year during which the Employee's date of the Qualified Termination occurs;

(iii) any vested, but not forfeited, benefits on the date of the Qualified Termination under the Company's employee benefit plans in accordance with the terms of such plans; and

(iv) any benefit continuation and conversion rights to which the Employee is entitled under the Company's employee benefit plans.

(b) "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the Person specified.

(c) "Alternative First Payment Date" means when the total number of days in the Consideration Period (as defined in Section 4.4) combined with the total number of days in the Revocation Period (as defined in Section 4.4) begin in one calendar year and end in the subsequent calendar year from the date a General Release is presented to the Employee under Section 4.4), it is the date which is the later of (I) January 1 of such subsequent calendar year, or (ii) the date on which the General Release becomes effective and irrevocable, and that later date becomes the date on which Employee's (A) COC Severance Pay, (B) Limited

Initial Coverage Period Severance Pay, or (C) Non-COC Severance Pay, as the case may be, is then paid.

(d) "Base Salary" means the Employee's gross base annual rate of salary with respect to services rendered or labor performed as reflected in the personnel records of the Company immediately prior to the Employee's Qualified Termination (or if the termination is due to a voluntary resignation for Good Reason based on a reduction in base salary, then the Employee's annual base salary in effect immediately prior to such reduction).

(e) "Beneficial Owner" has the meaning ascribed to such term in Rule 13d-3 under the Exchange Act.

(f) "Board" means the board of directors of Dentsply Sirona Inc.

(g) "Cash Awards" shall have that meaning ascribed to it in the Dentsply Sirona Inc. 2016 Omnibus Incentive Plan.

(h) "Cause" means the Employee has:

(i) committed an act of fraud against the Company,

(ii) committed an act of malfeasance, recklessness, or gross negligence that is materially injurious to the Company or its customers,

(iii) is indicted for, or convicted of, or pleads no contest to, a felony or a crime involving Employee's moral turpitude, or

(iv) breaches any confidentiality, non-competition, non-solicitation or assignment of inventions covenants to which the Employee is a party with the Company or any Affiliates.

Notwithstanding the foregoing, to the extent an Employee has an offer letter or employment agreement with the Company providing a less restrictive definition of Cause, such less restrictive definition of Cause shall apply.

(i) "CEO" means the Chief Executive Officer of the Company.

(j) "CFO" means the Chief Financial Officer of the Company.

(k) "Change of Control" means an event set forth in any one of the following subparagraphs which shall have occurred following May 25, 2022:

(i) any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates) representing thirty percent (30%) or more of the combined voting power of the Company's then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (B) of subparagraph (iii) immediately below; OR

(ii) the following individuals cease for any reason to constitute a majority of the number of directors then serving:

(A) individuals who, on May 25, 2022, constitute the Board, and

(B) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation, relating to the election of directors of the Company) whose appointment or election by the Board or nomination for election by the Company's stockholders was approved or recommended by a vote of at least two-thirds (⅔) of the directors then still in office who either were directors on May 25, 2022 or whose appointment, election or nomination for election was previously so approved or recommended; OR

(iii) there is consummated a merger or consolidation of the Company (or any direct or indirect parent or subsidiary of the Company) with any other company, other than

(A) a merger or consolidation which would result in the Beneficial Owners of the voting securities of the Company outstanding immediately prior thereto continuing to own, in combination with the ownership of any trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Affiliates, more than fifty percent (50%) of the combined voting power of the voting securities of the Company, the entity surviving such merger or consolidation or, if the Company or the entity surviving such merger or consolidation is then a subsidiary, the ultimate parent thereof outstanding immediately after such merger or consolidation, OR

(B) a merger or consolidation immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the board of directors of the Company, the entity surviving such merger or consolidation or, if the Company or the entity surviving such merger or consolidation is then a subsidiary, the ultimate parent thereof, OR

(C) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities Beneficially Owned by such Person any securities acquired directly from the Company or its Affiliates) representing thirty percent (30%) or more of the combined voting power of the Company's, a surviving entity's or, if the Company or the entity surviving such merger or consolidation is then a subsidiary, the ultimate parent's then outstanding securities; OR

(iv) a plan of complete liquidation or dissolution of the Company is consummated; OR

(v) there is consummated a sale or disposition of all or substantially all of the Company's assets, other than a sale or disposition by the Company of all or substantially all of the Company's assets immediately following which the individuals who comprise the Board immediately prior thereto constitute at least a majority of the board of directors of the entity to which such assets are sold or disposed or any parent thereof.

Notwithstanding the foregoing:

(I) a Change of Control shall not be deemed to have occurred by virtue of the consummation of any transaction or series of integrated transactions immediately following which the holders of Common Shares immediately prior to such transaction or series of transactions continue to have substantially the same proportionate ownership in an entity which owns all or substantially all of the assets of the Company immediately following such transaction or series of transactions, AND

(II) if all or a portion of any compensation (whether cash or equity) due under this Plan constitutes deferred compensation under Code Section 409A and such compensation (or portion thereof) is otherwise to be settled or paid on an accelerated basis due to a Change of Control event that is not a "change in control event" described in Treasury Regulation Section 1.409A-3(i)(5) or successor guidance,

then if such settlement or payment of such compensation (whether cash or equity) would result in additional tax under Code Section 409A, such compensation (or the portion thereof) shall vest at the time of the Change of Control (provided such accelerated vesting will not result in additional tax under Code Section 409A of the Code), but settlement or payment, as the case may be, shall not be accelerated, but instead be settled and paid in accordance with the original settlement or payment date.

(l) "Change of Control Period" means the period beginning on the date of closing of the Change of Control and ending twenty-four (24) months following the date of closing of the Change of Control.

(m) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

(n) "COC Qualified Termination" means an involuntary termination of the Employee's employment by the Company without Cause OR a voluntary resignation by the Employee for Good Reason, in either case, during the Change of Control Period.

(o) "COC Severance Pay" shall have the meaning ascribed to it in Section 4.2(a).

(p) "Code" means the Internal Revenue Code of 1986, as amended.

(q) "Common Shares" means the common shares, par value U.S. $0.01 per share, of the Company.

(r) "Company" means Dentsply Sirona Inc. or any successor thereto.

(s) "Employee" means:

(i) the CEO, but expressly excluding the Interim CEO;

(ii) any executive that reports directly into the CEO (or Interim CEO) who has a title of Senior Vice President or higher, but expressly excluding the Interim CFO; and

(iii) any other common-law employee that is designated in writing by the Human Resource Committee as eligible for participation under this Plan.

Notwithstanding the foregoing, if an executive who otherwise meets the definition of Employee on May 25, 2022 is in active negotiations with the Company pertaining to his/her impending termination of employment with the Company, such executive is expressly excluded from this definition and expressly exclude from eligibility under this Plan.

(t) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(u) "Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and the rules, regulations and guidance thereunder. Any reference to a provision in the Exchange Act shall include any successor provision thereto.

(v) "Equity Plan" means the Dentsply Sirona Inc. 2016 Omnibus Incentive Plan (or any successor omnibus equity plan thereto).

(w) "First Payment Date" means the first payroll period that immediately follows the completion of both the Consideration Period (as defined in Section 4.4) and Revocation Period (as defined in Section 4.4) pertaining to an Employee's (i) COC Severance Pay, (ii) Limited Initial Coverage Period Severance Pay, or (iii) Non-COC Severance Pay, as the case may be.

(x) "Good Reason" means when an Employee's voluntary resignation from the Company is triggered following the initial existence of one or more of the following conditions arising without the Employee's consent:

(i) any material reduction in Employee's Base Salary, other than as part of an across-the-board salary reduction applied to all similarly situated executives; OR

(ii) any material reduction in Employee's target annual cash bonus opportunity (i.e., as a percentage of Base Salary); OR

(iii) relocation of Employee to a facility or location more than fifty (50) miles from his/her principal place of work, resulting in a material increase to his/her normal commute; OR

(iv) solely with respect to the Company's Chief Executive Officer, Chief Financial Officer and General Counsel, a material diminution of authorities, duties or responsibilities (other than temporarily while Employee is physically or mentally incapacitated and unable to properly perform such duties, as determined by the Committee in good faith); OR

(v) solely with respect to a Change of Control, either:

(A) the Company's failure to obtain, within ten (10) days after the date of the Change of Control, the express assumption of the Plan by the successor entity, or

(B) any material reduction in Employee's target long term incentive (i.e., typically referred to in the Employee's employment agreement as an "annual equity award" expressed as a dollar amount).

Notwithstanding the foregoing, in order for an Employee to qualify for a Good Reason voluntary resignation, he/she must provide written notice of the circumstances giving rise to the Good Reason event to the CEO (but for the CEO, written notice is provided to the Board) within ninety (90) days after its initial existence and provide the Company thirty (30) days from receipt of such written notice any ability to cure such circumstance. An event constituting Good Reason shall no longer constitute Good Reason if the applicable event is cured by the Company within such thirty (30) day period; provided, however, if the Company does not timely cure the applicable Good Reason event, the Employee must resign for Good Reason by terminating his/her employment no later than thirty (30) days following the end of the Company's thirty (30) day cure period.

(y) "Initial Coverage Period" means the period beginning May 25, 2022 and ending on December 31, 2023, which is the period during which the Company is transitioning from the prior permanent CEO of the Company who held the position on December 31, 2021 to securing and hiring a newly appointed permanent CEO of the Company who is ultimately hired and appointed as CEO no later than December 31, 2023.

(z) "Interim CEO" means the interim CEO of the Company who was employed on an interim and non-permanent basis in accordance with that Interim Chief Executive Officer Employment Agreement, dated April 16, 2022.

(aa) "Interim CFO" means the interim CFO of the Company who was employed on an interim and non-permanent basis in accordance with that Interim Chief Executive Officer Employment Agreement, dated April 16, 2022.

(bb) "Limited Initial Coverage Period Qualified Termination" means an involuntary termination of the Employee's employment by the Company without Cause OR a voluntary resignation by the Employee for Good Reason, in either case, during the Initial Coverage Period.

(cc) "Limited Initial Coverage Period Severance Pay" shall have the meaning ascribed to it in Section 4.3(a).

(dd) "Non-COC Qualified Termination" means an involuntary termination of the Employee's employment by the Company without Cause OR a voluntary resignation by the Employee for Good Reason, in either case, outside of a Change of Control Period.

(ee) "Non-COC Severance Pay" shall have the meaning ascribed to it in Section 4.1(a).

(ff) "Person" has the meaning ascribed to such term in Section 3(a)(9) of the Exchange Act and used in Sections 13(d) and 14(d) thereof, including a "group" as defined in Section 13(d) thereof.

(gg) "Plan" means this Dentsply Sirona Inc. Key Employee Severance Benefits Plan, effective May 25, 2022, and as further amended from time to time.

(hh) "Qualified Termination" means (i) a COC Qualified Termination, (ii) a Limited Initial Coverage Period Qualified Termination, or (iii) a Non-COC Qualified Termination, as the case may be.

(ii) "Specified Employee" shall mean an Employee who is a key employee (as defined in Code Section 416(i) without regard to Code Section 416(i)(5)) of the Company). For purposes of this definition, an Employee is a key employee if the Employee meets the requirements of Code Section 416(i)(1)(A)(i), (ii) or (iii) (applied in accordance with the regulations thereunder and disregarding Code Section 416(i)(5)) at any time during the twelve-month period ending on any December 31. If an Employee is a key employee as of any December 31, that Employee is treated as a Specified Employee for the twelve-month period beginning on the January 1 following the relevant December 31.

2.2. Number and Gender. Wherever appropriate, words used in the singular shall be considered to include the plural and words used in the plural shall be considered to include the singular. The masculine gender, where appearing in the Plan, shall be deemed to include the feminine gender.

2.3. Headings. The headings are included solely for convenience, and if there is any conflict between any heading and the text of the Plan, the Plan text shall control.

ARTICLE 3.
PARTICIPATION AND ELIGIBILITY

3.1. Participation. An individual who meets the definition of an "Employee" as of his/her termination of employment with the Company and whose employment terminates due to an event which constitutes a Qualified Termination is entitled to receive benefits under this Plan.

ARTICLE 4.
SEVERANCE BENEFITS

4.1. Non-COC Qualified Termination. With respect to a Non-COC Qualified Termination, the following payment and benefits apply:

(a) Severance Pay.

(i) Amounts. Subject to Section 4.4 and Section 4.5 below, the Employee will be eligible to receive from the Company:

(A) CEO. A lump-sum payment equal to two (2) times the sum of the CEO's:

(I) Base Salary, plus

(II) target bonus opportunity available for the fiscal year which includes the date of the CEO's Non-COC Qualified Termination, plus

(III) the sum of the applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the CEO's active insurance coverage elections on the date of the CEO's Non-COC Qualified

Termination multiplied by twelve (12) (whether or not the CEO actually elects COBRA coverage); and

(B) Employees Other Than the CEO. A lump-sum payment equal to one (1) times the sum of the respective Employee's:

(I) Base Salary, plus

(II) target bonus opportunity available for the fiscal year which includes the date of the respective Employee's Non-COC Qualified Termination, plus

(III) the sum of the applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the Employee's active insurance coverage elections on the date of the Employee's Non-COC Qualified Termination multiplied by twelve (12) (whether or not the Employee actually elects COBRA coverage).

Base Salary, target bonus, and potential COBRA payments under this Section 4.1(a) are collectively hereinafter referred to as the "Non-COC Severance Pay." Notwithstanding the foregoing, to the extent an Employee has an offer letter or employment agreement with the Company providing a more favorable severance benefit pertaining to Base Salary, target bonus, and potential COBRA payment, then for purposes of this Section 4.1(a), the amount of such more favorable Base Salary, target bonus, and potential COBRA payment shall apply in lieu hereof.

(ii) Payment. If an Employee is not a Specified Employee as of the date of such Employee's Non-COC Qualified Termination, then the Non-COC Severance Pay shall be made in a lump sum payment on the First Payment Date in accordance with the Company's normal payroll practices; provided, that if the total number of days in the Consideration Period combined with the total number of days in the Revocation Period begin in one calendar year and end in the subsequent calendar year from the date such General Release is presented to the Employee, the Non-COC Severance Pay shall instead be paid on the Alternative First Payment Date However, if the Employee is a Specified Employee as of the date of such Employee's Non-COC Qualified Termination, the Non-COC Severance Pay with respect to an Employee shall be paid as follows:

(A) an amount equal to the lesser of:

(I) the lesser of:

(1) the total Non-COC Severance Pay; or

(2) two (2) times the Employee's Base Salary as in effect on the date of the respective Employee's Non-COC Qualified Termination; OR

(II) two (2) times the compensation limit of Code Section 401(a)(17) for the calendar year which includes the date of the respective Employee's Non-COC Qualified Termination (i.e., $610,000 for 2022),

shall be paid to the Employee in a lump sum no later than the First Payment Date or the Alternative First Payment Date, as the case may be; and

(B) an amount, if any, equal to:

(I) the total Non-COC Severance Pay, reduced by

(II) the amount paid to Employee under Subclause (A) immediately above,

shall be paid to the Employee in a lump sum no later than the seventh month anniversary of the date of the Employee's Non-COC Qualified Termination.

(b) Pro-Rated Actual Bonus Severance. Subject to Section 4.4 and Section 4.5 below, all Employees (including the CEO) will be eligible to receive from the Company, a lump-sum payment equal to

(i) the annual bonus that the Employee would have earned for the fiscal year in which the Employee's Non-COC Qualified Termination occurs had the Employee remained employed with the Company through the date the Employee was required to continue employment with the Company in order to be eligible to receive such bonus multiplied by

(ii) the fraction of (I) the number of days of employment completed during the fiscal year in which the Employee's Non-COC Qualified Termination occurs divided by (II) the total number of days in such fiscal year.

The pro-rated actual bonus severance, if any, will be paid at the same time as other similarly situated employees of the Company receiving bonus payments for the fiscal year but in no event will such lump sum payment of the pro-rated actual bonus be later than March 15 of the year following the year of the Employee's Non-COC Qualified Termination.

(c) Potential Equity-Compensation Accelerated Vesting. Subject to Section 4.4 and Section 4.5 below, all Employees (including the CEO) with outstanding equity-compensation awards under the Equity Plan where such equity-compensation awards are subject to either full acceleration of vesting or deemed full satisfaction of any performance conditions imposed upon such equity-compensation awards pursuant to the Employee's involuntary termination without Cause, shall equally be able to receive full acceleration of vesting or deemed full satisfaction of any performance conditions imposed upon such equity-compensation awards pursuant to the Employee's voluntary resignation without Good Reason; provided, however, in such situation, this Plan's definition of Good Reason shall govern whether a Good Reason has occurred.

4.2. COC Qualified Termination. With respect to a COC Qualified Termination, the following payment and benefits apply:

(a) Severance Pay.

(i) Amounts. Subject to Section 4.4 and Section 4.5 below, the Employee will be eligible to receive from the Company:

(A) CEO. A lump-sum payment equal to:

(I) three (3) times the sum of the CEO's:

(1) Base Salary, plus

(2) target bonus opportunity available for the fiscal year which includes the date of the CEO's COC Qualified Termination, plus

(3) the sum of the applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the CEO's active insurance coverage elections on the date of the CEO's COC Qualified Termination multiplied by twelve (12) (whether or not the CEO actually elects COBRA coverage); PLUS

(II) the CEO's target annual bonus for the fiscal year in which the CEO's COC Qualified Termination occurs, multiplied by the fraction of (I) the number of days of employment completed during the fiscal year in which the CEO's COC Qualified Termination occurs, divided by (II) the total number of days in such fiscal year; and

(B) Employees Other Than the CEO. A lump-sum payment equal to:

(I) two (2) times the sum of the respective Employee's:

(1) Base Salary, plus

(2) target bonus opportunity available for the fiscal year which includes the date of the respective Employee's COC Qualified Termination, plus

(3) the sum of the applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the Employee's active insurance coverage elections on the date of the Employee's COC Qualified Termination multiplied by twelve (12) (whether or not the Employee actually elects COBRA coverage); PLUS

(II) the respective Employee's target annual bonus for the fiscal year in which the Employee's COC Qualified Termination occurs, multiplied by the fraction of (I) the number of days of employment completed during the fiscal year in which the Employee's COC Qualified Termination occurs, divided by (II) the total number of days in such fiscal year.

Base Salary, target bonus, potential COBRA payments and pro-rated target bonus under this Section 4.2(a) are collectively hereinafter referred to as the "COC Severance Pay."

(ii) Payment. If an Employee is not a Specified Employee as of the date of such Employee's COC Qualified Termination, then the COC Severance Pay shall be made in a lump sum payment on the First Payment Date in accordance with the Company's normal payroll practices; provided, that if the total number of days in the Consideration Period combined with the total number of days in the Revocation Period begin in one calendar year and end in the subsequent calendar year from the date such General Release is presented to the Employee, the COC Severance Pay shall instead be paid on the Alternative First Payment Date However, if the Employee is a Specified Employee as of the date of such Employee's COC Qualified Termination, the COC Severance Pay with respect to an Employee shall be paid as follows:

(A) an amount equal to the lesser of:

(I) the lesser of:

(1) the total COC Severance Pay; or

(2) two (2) times the Employee's Base Salary as in effect on the date of the respective Employee's COC Qualified Termination; OR

(II) two (2) times the compensation limit of Code Section 401(a)(17) for the calendar year which includes the date of the respective Employee's Non-COC Qualified Termination (i.e., $610,000 for 2022)

shall be paid to the Employee in a lump sum no later than the First Payment Date or the Alternative First Payment Date, as the case may be; and

(B) an amount, if any, equal to:

(I) the total COC Severance Pay, reduced by

(II) the amount paid to Employee under Subclause (A) immediately above,

shall be paid to the Employee in a lump sum no later than the seventh month anniversary of the date of the Employee's COC Qualified Termination.

(b) Equity Compensation Acceleration. Subject to Section 4.4 and Section 4.5 below, all Employees (including the CEO) with outstanding equity-compensation awards under the Equity Plan which are subject to either full acceleration of vesting or deemed full satisfaction of any performance conditions imposed upon such equity-compensation awards pursuant to the change of control provisions under Section 15 of the Equity Plan, shall have this Plan's definition of Good Reason substituted for the definition of good reason which appears in the Equity Plan upon a Change of Control. However, consistent with the provisions of the Equity Plan, if the Change of Control is not a "change in control event" described in Treasury Regulation Section 1.409A-3(i)(5) or successor guidance, then if such settlement or payment of such equity compensation (whether cash or equity) would result in additional tax under Code Section 409A, such equity compensation (or the portion thereof) shall vest at the time of the Change of Control (provided such accelerated vesting will not result in additional tax under Code Section 409A of the Code), but settlement or payment, as

the case may be, shall not be accelerated, but instead be settled and paid in accordance with the original settlement or payment date applicable to such equity compensation.

4.3. Limited Initial Coverage Period Qualified Termination. With respect to a Limited Initial Coverage Period Qualified Termination, the following payment and benefits apply only to Employees other than the CEO:

(a) Severance Pay.

(i) Amounts. Subject to Section 4.4 and Section 4.5 below, Employees other than the CEO will be eligible to receive from the Company, a lump-sum payment equal to one and one-half (1.5) the sum of the respective Employee's:

(A) Base Salary, plus

(B) target bonus opportunity available for the fiscal year which includes the date of the respective Employee's Non-COC Qualified Termination, plus

(C) the sum of the applicable monthly COBRA charges for continuation of medical, dental and vision insurances on a post-employment basis which are based on the Employee's active insurance coverage elections on the date of the Employee's Non-COC Qualified Termination multiplied by twelve (12) (whether or not the Employee actually elects COBRA coverage).

Base Salary, target bonus, and potential COBRA payments under this Section 4.3(a) are collectively hereinafter referred to as the "Limited Initial Coverage Period Severance Pay."

(ii) Payment. If an Employee is not a Specified Employee as of the date of such Employee's Limited Initial Coverage Period Qualified Termination, then the Limited Initial Coverage Period Severance Pay shall be made in a lump sum payment on the First Payment Date in accordance with the Company's normal payroll practices; provided, that if the total number of days in the Consideration Period combined with the total number of days in the Revocation Period begin in one calendar year and end in the subsequent calendar year from the date such General Release is presented to the Employee, the Limited Initial Coverage Period Severance Pay shall instead be paid on the Alternative First Payment Date However, if the Employee is a Specified Employee as of the date of such Employee's Limited Initial Coverage Period Qualified Termination, the Limited Initial Coverage Period Severance Pay with respect to an Employee shall be paid as follows:

(A) an amount equal to the lesser of:

(I) the lesser of:

(1) the total Limited Initial Coverage Period Severance Pay; or

(2) two (2) times the Employee's Base Salary as in effect on the date of the respective Employee's Limited Initial Coverage Period Qualified Termination; OR

(II) two (2) times the compensation limit of Code Section 401(a)(17) for the calendar year which includes the date of the respective Employee's Limited Initial Coverage Period Qualified Termination (i.e., $610,000 for 2022),

shall be paid to the Employee in a lump sum no later than the First Payment Date or the Alternative First Payment Date, as the case may be; and

(B) an amount, if any, equal to:

(I) the total Limited Initial Coverage Period Severance Pay, reduced by

(II) the amount paid to Employee under Subclause (A) immediately above,

shall be paid to the Employee in a lump sum no later than the seventh month anniversary of the date of the Employee's Limited Initial Coverage Period Qualified Termination.

(b) Pro-Rated Actual Bonus Severance. Subject to Section 4.4 and Section 4.5 below, all Employees other than the CEO will be eligible to receive from the Company, a lump-sum payment equal to

(i) the annual bonus that the Employee would have earned for the fiscal year in which the Employee's Limited Initial Coverage Period Qualified Termination occurs had the Employee remained employed with the Company through the date the Employee was required to continue employment with the Company in order to be eligible to receive such bonus multiplied by

(ii) the fraction of (I) the number of days of employment completed during the fiscal year in which the Employee's Limited Initial Coverage Period Qualified Termination occurs divided by (II) the total number of days in such fiscal year.

The pro-rated actual bonus severance, if any, will be paid at the same time as other similarly situated employees of the Company receiving bonus payments for the fiscal year but in no event will such lump sum payment of the pro-rated actual bonus be later than March 15 of the year following the year of the Employee's Limited Initial Coverage Period Qualified Termination.

(c) Equity-Compensation Accelerated Vesting. Subject to Section 4.4 and Section 4.5 below, all Employees who received a Retention Equity Award via notification from the Interim CEO on April 27, 2022 (a "Retention Equity Award") and incur a Limited Initial Coverage Period Qualified Termination on or prior to December 31, 2023, shall become fully and immediately vested in his/her Retention Equity Award on the date of his/her Limited Initial Coverage Period Qualified Termination. However, consistent with the Code Section 409A, although the Employee's Retention Equity Award shall become fully vested in this situation, the settlement or payment, as the case may be, of the Retention Equity Award shall not be accelerated, but instead be settled and paid in accordance with the original settlement or payment date (i.e., the original vesting dates) applicable to such Retention Equity Awards.

(d) Expiration of Section 4.3. For clarity, this Section 4.3 shall naturally expire and have no further effect as of 11:59pm EST on December 31, 2023. Upon Section 4.3's expiration as of 11:59pm EST on December 31, 2023, the only Qualified Terminations that an Employee will then be eligible for on and after January 1, 2024 are (i) a COC Qualified Termination, or (ii) a Non-COC Qualified Termination, as the case may be. Effective January 1, 2024, Limited Initial Coverage Period Qualified Terminations will no longer exist.

4.4. General Release. Notwithstanding anything to the contrary, the severance benefits payable under Section 4.1(a), Section 4.2(a) and Section 4.3(a) above are specifically conditioned upon the execution by the Employee of a General Release and Waiver (the "General Release") of claims against the Company and all its Affiliates, effective as of the Employee's last day of employment, which agreement shall be in the form provided by the Company (in other words, that such General Release must be executed and become effective in accordance with its terms (i.e., not revoked), including the expiration of the Revocation Period (as defined below) specified in the General Release, and further that such General Release may reasonably be modified for general applicability by the Company from time to time). By law, any General Release provided to Employee must provide Employee a minimum period under the federal Age Discrimination in Employment Act (currently, either twenty-one (21) or forty-five (45) calendar days depending on Employee's age on the date of his/her Qualified Termination) to consider and evaluate whether to execute the General Release (the "Consideration Period"). Following Employee's execution of the General Release and providing such executed copy to the Company no later than the last day of the Consideration Period, the General Release will also identify for the Employee any applicable period which immediately follows the Consideration Period during which the Employee may revoke a General Release previously provided to the Company (the "Revocation Period"). For clarity, if the Employee does not execute the General Release within the Consideration Period specified in the General Release, or the Employee exercises the revocation right specified in the General Release, any and all such severance benefits provided for under Section 4.1(a), Section 4.2(a) or Section 4.3(a) shall be forfeited and shall not be payable at all.

4.5. Limitation on Plan Payments and Other Restrictions.

(a) Tax Withholding. The Company may withhold from any and all amounts payable under this Plan all Federal, state, city, or other taxes as may be required pursuant to any law or governmental regulation or ruling.

(b) Code Section 280G and Code Section 4999. Notwithstanding any other provision of this Plan or any other plan, arrangement or agreement to the contrary, if any of the payments or benefits provided or to be provided by the Company or its affiliates to the Employee or for the Employee's benefit pursuant to the terms of this Plan or otherwise ("Covered Payments") constitute "parachute payments" within the meaning of Code Section 280G and would, but for this Section 4.5(b) be subject to the excise tax imposed under Code Section 4999 (or any successor provision thereto) or any similar tax imposed by state or local law or any interest or penalties with respect to such taxes (collectively, the "Excise Tax"), then the Covered Payments shall be reduced (but not below zero) to the minimum extent necessary to ensure that no portion of the Covered Payments is subject to the Excise Tax. Any such reduction shall be made in accordance with Code Section 409A and the following:

(i) the Covered Payments which do not constitute nonqualified deferred compensation subject to Code Section 409A shall be reduced first; and

(ii) all other Covered Payments shall then be reduced as follows:

(A) cash payments shall be reduced before non-cash payments; and

(B) payments to be made on a later payment date shall be reduced before payments to be made on an earlier payment date.

(c) Codes Section 409A. All payments to Employees pursuant to this Plan are intended to comply with the requirements of Code Section 409A and the regulations thereunder, and to the maximum extent permitted by law this Plan shall be interpreted and administered in accordance with that intent. Without limiting the generality of the foregoing: (i) each separate installment of severance payable to Employee shall be considered a separate "payment" for purposes of Code Section 409A; (ii) if Executive incurs a Qualified Termination that does not also constitute a "separation from service" as defined in Code Section 409A, Employee's right to all amounts payable by reason of such Qualified Termination shall fully vest on the date of the Qualified Termination, but to the extent required by Code Section 409A, payment shall be deferred until Employee incurs a "separation from service" as so defined and if the Employee is a Specified Employee, then pursuant to the further delayed payment rules under Code Section 409A. The Company reserves the right to amend the Plan as it considers necessary or advisable, in its sole discretion and without the consent of the Employee or any other individual, to comply with any provision required to avoid the imposition of the additional tax imposed under Code Section 409A or to otherwise avoid income recognition under Code Section 409A prior to the actual payment of any benefits or imposition of any additional tax.

4.6. Accrued Benefits. Regardless of the type of Qualified Termination, Employees are always entitled to receive their Accrued Benefits on top of any benefits provided under this Plan.

4.7. Termination other than Qualified Terminations. If the termination of Employee's employment with the Company is not a Qualified Termination, then the Employee will not be entitled to receive severance or other benefits under this Plan.

4.8. Transfer between the Company and Affiliates. For purposes of the Plan, if the Employee is involuntarily transferred from the Company to an Affiliate or vice versa, such transfer will not be an involuntary termination without Cause but may give the Employee the ability to resign for Good Reason.

4.9. Exclusive Remedy. In the event of a termination of the Employee's employment with the Company, the provisions of the Plan are intended to be and are exclusive and in lieu of any other rights or remedies to which the Employee may otherwise be entitled, whether at law, tort or contract, in equity. The Employee will be entitled to no benefits, compensation or other payments or rights upon termination of employment other than those benefits expressly set forth in the Plan.

ARTICLE 5.
DETERMINATION OF BENEFITS, CLAIMS PROCEDURE AND ADMINISTRATION

5.1. Claims. An Employee who believes that he/she is being denied a benefit to which he/she is entitled (hereinafter referred to as "Claimant"), or his/her duly authorized representative, may file a written request for such benefit with the Human Resources Committee setting forth his/her claim. The request must be addressed to the Human Resources Committee at the Company at its then principal place of business.

5.2. Claim Decision. Upon receipt of a claim, the Human Resources Committee shall advise the Claimant that a reply will be forthcoming within a reasonable period of time, but ordinarily not later than ninety (90) days, and shall, in fact, deliver such reply within such period. However, the Human Resource Committee may extend the reply period for an additional ninety (90) days for reasonable cause. If the reply period will be extended, the Human Resource Committee shall advise the Claimant in writing during the initial ninety (90)-day period indicating the special circumstances requiring an extension and the date by which the Human Resource Committee expects to render the benefit determination. If the claim is denied in whole or in part, the Human Resource Committee will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(a) the specific reason or reasons for the denial;

(b) the specific references to pertinent Plan provisions on which the denial is based;

(c) description of any additional material or information necessary for the Claimant to perfect the claim and an explanation as to why such material or such information is necessary;

(d) appropriate information as to the steps to be taken if the Claimant wishes to submit the claim for review, including a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following an adverse benefit determination on review; and

(e) the time limits for requesting a review of the denial under Section 10.3 and for the actual review of the denial under Section 10.4.

5.3. Request for Review. Within sixty (60) days after the receipt by the Claimant of the written opinion described above, the Claimant may request in writing that the Secretary of the Company ("Secretary") review the Human Resource Committee's prior determination. Such request must be addressed to the Secretary at the Company at its then principal place of business. The Claimant or his/her duly authorized representative may submit written comments, documents, records or other information relating to the denied claim, which such information shall be considered in the review under this Section without regard to whether such information was submitted or considered in the initial benefit determination. The Claimant or his/her duly authorized representative shall be provided, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which:

(a) was relied upon by the Human Resource Committee in making its initial claims decision;

(b) was submitted, considered or generated in the course of the Human Resource Committee making its initial claims decision, without regard to whether such instrument was actually relied upon by the Human Resource Committee in making its decision; or

(c) demonstrates compliance by the Human Resource Committee with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with governing Plan documents and that, where appropriate, the Plan provisions have been applied consistently with respect to similarly situated claimants.

If the Claimant does not request a review of the Human Resource Committee's determination within such sixty (60)-day period, he or she shall be barred and estopped from challenging such determination.

5.4. Review of Decision. Within a reasonable period of time, ordinarily not later than sixty (60) days, after the Secretary's receipt of a request for review, it will review the Human Resource Committee's prior determination. If special circumstances require that the sixty (60)-day time period be extended, the Secretary will so notify the Claimant within the initial sixty (60)-day period indicating the special circumstances requiring an extension and the date by which the Secretary expects to render its decision on review, which shall be as soon as possible but not later than one-hundred twenty (120) days after receipt of the request for review. In the event that the Secretary extends the determination period on review due to a Claimant's failure to submit information necessary to decide a claim, the period for making the benefit determination on review shall not take into account the period beginning on the date on which notification of extension is sent to the Claimant and ending on the date on which the Claimant responds to the request for additional information. Benefits under the Plan will be paid only if the Secretary decides in its discretion that the Claimant is entitled to such benefits. The decision of the Secretary shall be final and non-reviewable, unless found to be arbitrary and capricious by a court of competent review. Such decision will be binding upon the Employer and the Claimant. If the Secretary makes an adverse benefit determination on review, the Secretary will render a written opinion, using language calculated to be understood by the Claimant, setting forth:

(a) the specific reason or reasons for the denial;

(b) the specific references to pertinent Plan provisions on which the denial is based;

(c) a statement that the Claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records and other information which:

(i) was relied upon by the Secretary in making its decision;

(ii) was submitted, considered or generated in the course of the Secretary making its decision, without regard to whether such instrument was actually relied upon by the Secretary in making its decision; or

(iii) demonstrates compliance by the Secretary with its administrative processes and safeguards designed to ensure and to verify that benefit claims determinations are made in accordance with governing Plan documents, and that, where appropriate, the Plan provisions have been applied consistently with respect to similarly situated claimants; and

(iv) a statement of the Claimant's right to bring a civil action under Section 502(a) of ERISA following the adverse benefit determination on such review.

5.5. Discretionary Authority. The Human Resource Committee and Secretary shall both have discretionary authority to determine a Claimant's entitlement to benefits upon his/her claim or his/her request for review of a denied claim, respectively.

ARTICLE 6.
MISCELLANEOUS

6.1. Plan Not a Contract of Employment. The adoption and maintenance of the Plan shall not be or be deemed to be a contract between the Company and any Employee or to be consideration for the employment of any Employee. Nothing herein contained shall give or be deemed to give any person the right to be retained in the employ of the Company or to restrict the right of the Company to discharge any Employee at any time; nor shall the Plan give or be deemed to give the Company the right to require any Employee to remain in the employ of the Company or to restrict any Employee's right to terminate his/her employment at any time.

6.2. Amendment and Termination. The Committee may from time to time, in its complete and sole discretion, unilaterally amend, in whole or in part, any or all of the provisions of the Plan subject to providing one year's advance notice to the Employees prior to the effective date of any change that has the effect of reducing or diminishing the rights of any Employee under the Plan; provided, however, the Committee is not permitted to make any changes to the Plan during any Change of Control Period; provided, further, no amendment may be made which would impair the rights of an Employee with respect to amounts already due and owing. Notwithstanding anything to the contrary, (i) the Committee retains unilateral authority to amend the Plan at any time, regardless of impact to Employees, if such change is required under any law applicable to the Plan, and (ii) any change which directly impacts the benefits provided to the CEO may not be amended without the Committee seeking Board approval first. Only the Board has the right to terminate the Plan at any time so long as such termination complies fully with the provisions of Code Section 409A and the underlying final regulations.

6.3. Governing Laws. All provisions of the Plan shall be construed in accordance with the laws of Delaware except to the extent preempted by federal law.

6.4. Entire Agreement. This document and any amendments contain all the terms and provisions of the Plan and shall constitute the entire Plan, any other alleged terms or provisions being of no effect.

6.5. No Guarantee of Tax Consequences. While the Company has established, and will maintain the Plan, the Company makes no representation, warranty, commitment, or guaranty concerning the income, employment, or other tax consequences of participation in the Plan under federal, state, or local law.

6.6 **The Company's Successors**. Any successor (whether direct or indirect and whether by purchase, merger, consolidation, liquidation or otherwise) to all or substantially all of the Company's business and/or assets must assume the obligations under the Plan and agree expressly to perform the obligations under the Plan in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession.

6.7 Notice.

(a) General. All notices and other communications required or permitted under the Plan shall be in writing and will be effectively given (i) upon actual delivery to the party to be notified, (ii) twenty-four (24) hours after confirmed facsimile transmission, (iii) one (1) business day after deposit with a recognized overnight courier, or (iv) three (3) business days after deposit with the U.S. Postal Service by first class certified or registered mail, return receipt requested, postage prepaid, addressed (A) if to the Employee, at the address the Employee shall have most recently furnished to the Company in writing, (B) if to the Company, at the following address:

DENTSPLY SIRONA Inc.
13320 Ballantyne Corporate Place
Charlotte, NC 28277
Attention: General Counsel

(b) Notice of Termination. Any termination by the Company for Cause will be communicated by a notice of termination to the Employee, and any termination by the Employee for Good Reason will be communicated by a notice of termination to the Company, in each case given in accordance with the Section 6.7. Such notice will indicate the specific termination provision in the Plan relied upon, will set forth in reasonable detail the facts and circumstances claimed to provide a basis for termination under the provision so indicated, and will specify the termination date (which will be not more than thirty (30) days after the later of (i) the giving of such notice, or (ii) the end of any applicable cure period). The failure by the Employee to include in the notice any fact or circumstance that contributes to a showing of Good Reason will not waive any right of the Employee under the Plan or preclude the Employee from asserting such fact or circumstance in enforcing the Employee's rights under the Plan.

6.8 Resignation. The termination of the Employee's employment for any reason will also constitute, without any further required action by the Employee, the Employee's voluntary resignation from all officer and/or director positions held at the Company or an Affiliate, and at the Board's request, the Employee will execute any documents reasonably necessary to reflect such resignation.

6.9 Waiver. No waiver by either party of any breach of, or of compliance with, any condition or provision of the Plan by the other party will be considered a waiver of any other condition or provision or of the same condition or provision at another time.

6.10 Severability. The invalidity or unenforceability of any provision or provisions of the Plan will not affect the validity or enforceability of any other provision hereof, which will remain in full force and effect.