

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

**FORM 8-K**

**CURRENT REPORT**

**Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported) June 3, 2021

**Booking Holdings Inc.**

(Exact name of registrant as specified in its charter)

**Delaware**  
(State or other Jurisdiction of  
Incorporation)

**1-36691**  
(Commission File Number)

**06-1528493**  
(IRS Employer Identification No.)

**800 Connecticut Avenue**  
(Address of principal office)

**Norwalk**  
(Address of principal office)

**Connecticut**

**06854**  
(zip code)

Registrant's telephone number, including area code: **(203) 299-8000**

**N/A**

(Former name or former address, if changed since last report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4c 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	Name of Each Exchange on which Registered:
Common Stock par value \$0.008 per share	BKNG	The NASDAQ Global Select Market
0.800% Senior Notes Due 2022	BKNG 22A	The NASDAQ Stock Market LLC
2.150% Senior Notes Due 2022	BKNG 22	The NASDAQ Stock Market LLC
2.375% Senior Notes Due 2024	BKNG 24	The NASDAQ Stock Market LLC
0.100% Senior Notes Due 2025	BKNG 25	The NASDAQ Stock Market LLC
1.800% Senior Notes Due 2027	BKNG 27	The NASDAQ Stock Market LLC
0.500% Senior Notes Due 2028	BKNG 28	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.

**Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.**

On June 3, 2021, at the 2021 Annual Meeting of Stockholders of Booking Holdings Inc. (the “Company”), stockholders approved the 1999 Omnibus Plan, as amended and restated effective June 3, 2021 (the “1999 Omnibus Plan”). The 1999 Omnibus Plan, which was adopted by the Company’s Board of Directors (the “Board”) on April 7, 2021, effective as of its approval by the Company’s stockholders, extends the term for another ten years, until June 3, 2031.

A more complete description of the terms of the 1999 Omnibus Plan can be found in the Company’s definitive proxy statement, filed with the Securities and Exchange Commission on April 20, 2021 (the “2021 Proxy Statement”). The foregoing description is qualified in its entirety by reference to the text of the 1999 Omnibus Plan, a copy of which is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

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

On June 3, 2021, at the 2021 Annual Meeting of Stockholders of the Company, stockholders approved an amendment to the Restated Certificate of Incorporation of the Company to enable stockholders owning at least 25% of the Company’s outstanding shares of common stock to act by written consent (the “Amendment”). The Amendment became effective upon the filing of a Certificate of Amendment of the Restated Certificate of Incorporation (the “Certificate of Amendment”) with the Secretary of State of Delaware on June 4, 2021.

As disclosed in the Company’s 2021 Proxy Statement, the Board planned to approve amendments to the Company’s Amended and Restated By-Laws in connection with the approval of the Amendment to provide for accompanying procedural safeguards governing the use of action by written consent (the “Amended By-Laws”). On June 3, 2021, the Board approved the Amended By-Laws to provide for the right of stockholders to act by written consent, including the procedural safeguards as summarized below and other conforming and ministerial changes, effective as of June 4, 2021.

The Amended By-Laws provide for procedural safeguards governing the use of action by written consent, including: (i) a request for action by written consent must include the same information as would be required to propose a matter to be acted upon at a stockholder meeting, including a reasonably brief description of the business desired to be acted upon, and the text of the proposal or business; (ii) a request for action by written consent must include the requesting stockholder’s name and address, the class, series and number of shares of capital stock of the Company held by such stockholder and include a description of all arrangements or understandings between such stockholder and any other person or persons (including their names) in connection with such business, and any material interest of such stockholder in such business; (iii) written consents must be solicited from all stockholders; (iv) consents signed by a sufficient number of stockholders to take such action must be delivered to the Company within a 60-day time period starting from the date of the earliest dated consent that is delivered to the Company in the manner required by the Restated Certificate of Incorporation and the Amended By-Laws; and (v) the written consent process is not available for matters that would not be a proper subject for stockholder action, or would be in violation of applicable law.

A more complete description of the Amendment can be found in the Company’s 2021 Proxy Statement. The foregoing descriptions of the Amendment and the Amended By-Laws are qualified in their entirety by reference to the text of the Certificate of Amendment and the Amended By-Laws, copies of which are filed as Exhibits 3.1 and 3.2, respectively, to this Current Report on Form 8-K and are incorporated herein by reference.

**Item 5.07. Submission of Matters to a Vote of Security Holders.**

The 2021 Annual Meeting of Stockholders of the Company was held virtually on June 3, 2021 at [www.virtualshareholdermeeting.com/BKNG2021](http://www.virtualshareholdermeeting.com/BKNG2021). The following proposals were voted on by the Company’s stockholders with the following results:

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1. The stockholders of the Company elected all of the Company's nominees for election to the Board of Directors to serve until the next annual meeting of stockholders and until their respective successors are elected and qualified. The votes were as follows:

<u>Nominee</u>	<u>Votes For</u>	<u>Votes Against</u>	<u>Abstentions</u>	<u>Broker Non-Votes</u>
Timothy M. Armstrong	34,108,834	151,910	—	1,433,792
Glenn D. Fogel	34,191,372	69,372	—	1,433,792
Mirian M. Graddick-Weir	33,961,375	299,369	—	1,433,792
Wei Hopeman	34,187,622	73,122	—	1,433,792
Robert J. Mylod, Jr.	30,252,527	4,008,217	—	1,433,792
Charles H. Noski	34,093,102	167,642	—	1,433,792
Nicholas J. Read	34,115,507	145,237	—	1,433,792
Thomas E. Rothman	34,190,131	70,613	—	1,433,792
Bob van Dijk	32,441,328	1,819,416	—	1,433,792
Lynn M. Vojvodich	34,086,930	173,814	—	1,433,792
Vanessa A. Wittman	34,019,677	241,067	—	1,433,792

2. A proposal to approve on an advisory basis the compensation paid by the Company to its named executive officers was approved as follows:

Votes For:	31,126,739
Votes Against:	3,078,797
Abstentions:	55,208
Broker Non-Votes:	1,433,792

3. A proposal to amend the Company's 1999 Omnibus Plan was approved as follows:

Votes For:	32,998,004
Votes Against:	1,223,800
Abstentions:	38,940
Broker Non-Votes:	1,433,792

4. A proposal to ratify the selection of Deloitte & Touche LLP as the independent registered public accounting firm of the Company for the fiscal year ending December 31, 2021 was approved as follows:

Votes For:	33,359,833
Votes Against:	2,313,736
Abstentions:	20,967
Broker Non-Votes:	—

5. A management proposal to amend the certificate of incorporation to allow stockholders the right to act by written consent was approved as follows:

Votes For:	31,214,089
Votes Against:	902,009
Abstentions:	2,144,646
Broker Non-Votes:	1,433,792

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6. A non-binding stockholder proposal requesting the right of stockholders to act by written consent was not approved as follows:

Votes For:	14,919,712
Votes Against:	19,228,466
Abstentions:	112,566
Broker Non-Votes:	1,433,792

7. A non-binding stockholder proposal requesting the Company issue a climate transition report was approved as follows:

Votes For:	19,236,990
Votes Against:	14,843,034
Abstentions:	180,720
Broker Non-Votes:	1,433,792

8. A non-binding stockholder proposal requesting the Company hold an annual advisory stockholder vote on the Company's climate policies and strategies was not approved as follows:

Votes For:	11,675,163
Votes Against:	19,479,166
Abstentions:	3,106,415
Broker Non-Votes:	1,433,792

**Item 9.01. Financial Statements and Exhibits.**

**(d) Exhibits**

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">3.1</a>	Certificate of Amendment of the Restated Certificate of Incorporation, dated as of June 4, 2021.
<a href="#">3.2</a>	Amended and Restated By-Laws of Booking Holdings Inc., dated as of June 4, 2021.
<a href="#">99.1</a>	1999 Omnibus Plan, as amended and restated effective June 3, 2021.
104	Cover Page Interactive Data File - the cover page interactive data file does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.

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## SIGNATURES

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

BOOKING HOLDINGS INC.

By: /s/ Peter J. Millones  
Name: Peter J. Millones  
Title: Executive Vice President, General Counsel and Corporate Secretary

Date: June 4, 2021

**CERTIFICATE OF AMENDMENT OF THE  
RESTATED CERTIFICATE OF INCORPORATION OF  
BOOKING HOLDINGS INC.**

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Pursuant to Section 242 of the General  
Corporation Law of the State of Delaware

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Booking Holdings Inc. (the "Corporation"), a corporation organized and existing under the laws of the State of Delaware, does hereby certify:

FIRST: The sixth paragraph of Article Fifth of the Restated Certificate of Incorporation of the Corporation is hereby amended in its entirety to read as follows:

"(6) Any action required to be taken at any annual or special meeting of stockholders of the Corporation or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting and without a vote, pursuant to Section 228 of the DGCL if, in accordance with the By-Laws, (a) holders of not less than twenty-five percent (25%) of the outstanding shares of the Corporation's common stock have submitted a written request in accordance with the By-Laws of the Corporation to the Secretary of the Corporation requesting that the Board of Directors establish a record date for the proposed action by stockholders and including the information with respect to such action and such holders as required by the By-Laws of the Corporation, (b) the Board of Directors fixes such a record date, and (c) consents in writing, setting forth the action so taken, are delivered to the Secretary of the Corporation and not revoked, and are signed by the holders of the outstanding shares of the Corporation's common stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted."

SECOND: The amendment to the Restated Certificate of Incorporation effected hereby has been proposed by the Board of Directors of the Corporation and adopted by the requisite vote of the stockholders of the Corporation in the manner prescribed by Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Amendment to be executed in its name on this 4th day of June 2021.

**BOOKING HOLDINGS INC.**

By: /s/ Peter J. Millones

Name: Peter J. Millones

Title: Executive Vice President, General Counsel and Corporate Secretary

**BY-LAWS**  
**OF**  
**BOOKING HOLDINGS INC.**  
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1. Registered Office. The registered office of the Corporation shall be in the City of Wilmington, County of New Castle, State of Delaware.

Section 2. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine.

ARTICLE II

STOCKHOLDERS

Section 1. Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware as shall be designated from time to time by the Board of Directors.

Section 2. Annual Meetings. The annual meeting of stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the annual meeting of stockholders.

Section 3. Special Meetings. Unless otherwise required by law, special meetings of stockholders may be called as set forth in the certificate of incorporation of the Corporation, as amended or amended and restated from time to time (the "Certificate of Incorporation") and these By-Laws. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 4 of Article II of these By-Laws and, in addition, with respect to a special meeting of stockholders requested by the stockholders, in accordance with Section 5 of Article II of

these By-Laws; provided, however, that nothing in these By-Laws shall prohibit the Board of Directors from submitting matters to the stockholders at any special meeting requested by the stockholders.

Section 4. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, date and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise required by law, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and vote at such meeting.

Section 5. Notice of Stockholder Business and Nominations.

(A) Annual Meetings of Stockholders.

(1) Except as provided in Section 13 of Article II of these By-Laws, nominations of persons for election to the Board of Directors and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (a) pursuant to the Corporation's notice of meeting (or any supplement thereto), (b) by or at the direction of the Board of Directors, or (c) subject to the Certificate of Incorporation, by any stockholder of the Corporation (i) who was a stockholder of record (a "Record Stockholder") of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed or such nomination or nominations are made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in Paragraphs (A)(2) and (A)(3) of this Section 5 is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the meeting, (ii) who is entitled to vote at the meeting upon such election of directors or upon such business, as the case may be, and (iii) who complies with the notice procedures set forth in Paragraphs (A)(2) and (A)(3) of this Section 5. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board of Directors and except as provided in Section 13 of Article II of these By-Laws, the foregoing clause (c) shall be the exclusive means for a stockholder to make nominations of

directors or propose business to be brought before an annual meeting of stockholders. In addition, for business (other than the nomination of persons for election to the Board of Directors) to be properly brought before an annual meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to the Certificate of Incorporation, these By-Laws, and applicable law.

(2) Without qualification, for nominations (other than nominations made pursuant to Section 13 of Article II of these By-Laws, with respect to which nominations a Proxy Access Nomination Notice must be delivered to the Corporation pursuant to Section 13(B) of Article II of these By-Laws and the other provisions of Section 13 of Article II of these By-Laws must otherwise be satisfied) or other business to be properly brought before an annual meeting of stockholders by a stockholder pursuant to clause (c) of Paragraph (A)(1) of this Section 5, the stockholder (a) must have given timely notice thereof in writing and in proper form to the Secretary at the principal executive offices of the Corporation, and (b) must provide any updates or supplements to such notice at such times and in the forms required by this Section 5. To be timely, a stockholder's notice relating to an annual meeting (other than a Proxy Access Nomination Notice, which must be delivered to the Corporation pursuant to Section 13(B) of Article II of these By-Laws) shall be delivered to, or mailed to and received by, the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day and not earlier than the close of business on the one hundred twentieth (120th) day before the date of the one-year anniversary of the immediately preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than thirty (30) days after such anniversary date, notice by the stockholder (other than a Proxy Access Nomination Notice, which must be delivered to the Corporation pursuant to Section 13(B) of Article II of these By-Laws) must be so delivered, or mailed and received, not earlier than the close of business on the one hundred twentieth (120th) day before such annual meeting and not later than the close of business on the later of the ninetieth (90th) day before such annual meeting or the tenth (10th) day following the day on which public announcement (as defined below) of the date of such meeting is first made by the Corporation. In no event shall the public

announcement of an adjournment or postponement of an annual meeting of stockholders commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(3) To be in proper form for purposes of this Section 5 or for purposes of Section 13 of Article II of these By-Laws, a stockholder's notice or request to the Secretary (whether pursuant to this Paragraph (A), Paragraph (B), or Paragraph (C) of this Section 5 or pursuant to Section 13 of Article II of these By-Laws) must set forth:

(a) as to each Proposing Person (as defined below), (i) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records); (ii) the class or series and number of shares of capital stock of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person (*provided* that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series and number of shares of capital stock of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future); and (iii) if the Proposing Person delivers a Proxy Access Nomination Notice to the Corporation, the number of shares owned by such Proposing Person as calculated in accordance with Section 13(D) of Article II of these By-Laws;

(b) as to each Proposing Person, (i) any option, warrant, convertible security, stock appreciation right, derivative, swap, or other transaction or series of transactions engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to give such Proposing Person economic risk similar to ownership of shares of any class or series of capital stock of the Corporation, including due to the fact that the value of such option, warrant, convertible security, stock appreciation right, derivative, swap, or other transactions are determined by reference to the price, value, or volatility of any shares of any class or series of capital stock of the Corporation, or which option, warrant, convertible security, stock appreciation right, derivative, swap, or other transactions provide, directly or indirectly, the opportunity to profit from any increase in the price or value of shares of any class or series of capital stock of the Corporation ("Synthetic Equity

Interests”), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the option, warrant, convertible security, stock appreciation right, derivative, swap, or other transactions convey any voting rights in such shares to such Proposing Person, (y) the option, warrant, convertible security, stock appreciation right, derivative, swap, or other transactions are required to be, or are capable of being, settled through delivery of such shares, or (z) such Proposing Person may have entered into other transactions that hedge or mitigate the economic effect of such option, warrant, convertible security, stock appreciation right, derivative, swap, or other transactions; (ii) any proxy (other than a revocable proxy or consent given in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Schedule 14A), agreement, arrangement, understanding, or relationship pursuant to which such Proposing Person has or shares a right to vote any shares of any class or series of capital stock of the Corporation (including the number of shares and class or series of capital stock of the Corporation that are subject to such proxy, agreement, arrangement, understanding, or relationship); (iii) any agreement, arrangement, understanding, or relationship, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, engaged in, directly or indirectly, by such Proposing Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of shares of any class or series of capital stock of the Corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Proposing Person with respect to the shares of any class or series of capital stock of the Corporation, or that provides, directly or indirectly, the opportunity to profit from any decrease in the price or value of the shares of any class or series of the Corporation (“Short Interests”); (iv) any rights to dividends on the shares of any class or series of capital stock of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation; (v) any proportionate interest in shares of the Corporation, Synthetic Equity Interests or Short Interests held, directly or indirectly, by a general or limited partnership in which such stockholder is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, (vi) any performance related

fees (other than an asset based fee) to which such Proposing Person is entitled based on any increase or decrease in the price or value of shares of any class or series of the capital stock of the Corporation, or any Synthetic Equity Interests or Short Interests, if any; and (vii) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the nominations or business proposed to be brought before the meeting pursuant to Regulation 14A under the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (i) through (vii) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company, or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these By-Laws on behalf of a beneficial owner;

(c) if such notice pertains to the nomination by the stockholder of a person or persons for election to the Board of Directors (each, a “nominee”), as to each nominee, (i) the name, age, business and residence address, and principal occupation or employment of the nominee; (ii) all other information relating to the nominee that would be required to be disclosed about such nominee if proxies were being solicited for the election of the nominee as a director in an election contest (whether or not such proxies are or will be solicited), or that is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; (iii) 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 or agreements, including any agreement pursuant to which the nomination is to be made, between or among such Proposing Persons and each nominee, if any, including without limitation all information that would be required to be disclosed pursuant to Item 404 promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the “registrant” for

purposes of such Item and the nominee were a director or executive officer of such registrant; (iv) such nominee's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected; and (v) all information with respect to such nominee that would be required to be set forth in a stockholder's notice pursuant to this Section 5 if such nominee were a Proposing Person, including all the information described in sub-paragraph (b) above;

(d) if the notice relates to any business (other than the nomination of persons for election to the Board of Directors) that the stockholder proposes to bring before the meeting or for corporate action by written consent, (i) a reasonably brief description of the business desired to be brought before the meeting or for corporate action by written consent, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and if such business includes a proposal to amend the By-Laws of the Corporation, the language of the proposed amendment), (iii) the reasons for conducting such business at the meeting or for corporate action by written consent, (iv) any material interest in such business of each Proposing Person, and (v) a description of all agreements, arrangements and understandings between or among each Proposing Person and any other person or persons (including their names) in connection with the proposal of such business;

(e) a representation that the stockholder submitting the notice or the request is a holder of record of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, or to act by written consent, as applicable;

(f) a representation whether any Proposing Person intends or is part of a group that intends (i) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (ii) otherwise to solicit proxies from stockholders in support of such proposal or nomination; and

(g) with respect to each nominee for election or reelection to the Board of Directors, a completed and signed questionnaire, representation and agreement required by Section 6 of Article II of these By-Laws.

In addition, to be in proper written form for purposes of this Section 5, a stockholder's notice or request to the Secretary (whether pursuant to this Paragraph (A), Paragraph (B) or Paragraph (C) of this Section 5) must be updated and supplemented as required by Paragraph (D)(1) of this Section 5.

The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine (i) the eligibility of such proposed nominee to serve as a director of the Corporation, and (ii) whether such nominee qualifies as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation, or any publicly disclosed corporate governance guideline or committee charter of the Corporation.

(4) Notwithstanding anything in the second sentence of paragraph (A)(2) of this Section 5 to the contrary, if the number of directors to be elected to the Board of Directors of the Corporation at an annual meeting is increased and there is no public announcement by the Corporation specifying the size of the increased Board of Directors at least one hundred (100) days before the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 5 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to, or mailed to and received by, 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; provided that this Section 5(A)(4) shall apply only to a nomination pursuant to Section 5 of Article II of these By-Laws and shall not apply to a nomination pursuant to Section 13 of Article II of these By-Laws.

(5) Only such persons who are nominated in accordance with the procedures set forth in Paragraph (A) of this Section 5 (including those persons nominated by or at the direction of the Board of Directors) or in accordance with the procedures in Section 13 of Article II of these By-Laws shall be eligible to be elected at an annual meeting of stockholders of the Corporation to serve as directors. Only

such business shall be conducted at an annual meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in Paragraph (A) of this Section 5 or the procedures set forth in Section 13 of Article II of these By-Laws. Except as otherwise provided by applicable law, the chair of an annual meeting of stockholders shall have the power and duty (a) if the facts warrant, to determine that a nomination or any business proposed to be brought before the annual meeting was not made or was not proposed, as the case may be, in accordance with the procedures set forth in Paragraph (A) of this Section 5 or the procedures set forth in Section 13 of Article II of these By-Laws, and (b) if any proposed nomination or business was not made or was not proposed in compliance with Paragraph (A) of this Section 5 or Section 13 of Article II of these By-Laws, as applicable, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

(B) Special Meetings of Stockholders.

(1) Nominations of persons for election to the Board of Directors at special meetings at which directors are to be elected and the proposal of business to be considered by the stockholders may be made at a special meeting of stockholders pursuant to the Corporation's notice of meeting only (a) by or at the direction of the Board of Directors or (b) subject to the Certificate of Incorporation, by any stockholder of the Corporation (i) who was a Record Stockholder of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination or nominations (if a purpose for such meeting as stated in the Corporation's notice for such meeting is the election of one or more directors) are made or such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time the notice provided for in Paragraph (B)(2) of this Section 5 is delivered to the Secretary of the Corporation and on the record date for the determination of stockholders entitled to vote at the special meeting, (ii) who is entitled to vote at the meeting upon such election of directors or upon such business, as the case may be, and (iii) who complies with the notice procedures set forth in Paragraph (B)(2) of this Section 5; provided, however, that a stockholder may nominate persons for election at a special meeting only to such position(s) as specified in the Corporation's notice of the meeting. The foregoing clause (b) shall be the exclusive means for a stockholder to make nominations of

directors or propose business to be brought before a special meeting of stockholders. Notwithstanding anything to the contrary in these By-Laws, nominations made pursuant to Section 13 of Article II of these By-Laws may not be made in connection with a special meeting of stockholders. In addition, for business (other than the nomination of persons for election to the Board of Directors) to be properly brought before a special meeting by a stockholder, such business must be a proper matter for stockholder action pursuant to the Certificate of Incorporation, these By-Laws and applicable law.

(2) If a special meeting has been called in accordance with this Section 5 for the purpose of electing one or more directors to the Board of Directors or to propose other business at the meeting, then for nominations of persons for election to the Board of Directors to be made at, or other business to be properly brought before, such special meeting by a stockholder pursuant to clause (b) of Paragraph (B)(1) of this Section 5, the stockholder (a) must have given timely notice thereof in writing and in the proper form to the Secretary of the Corporation at the principal executive offices of the Corporation, and (b) must provide any updates or supplements to such notice at such times and in the forms required by this Section 5. To be timely, a stockholder's notice relating to a special meeting shall be delivered to, or mailed to and received by, the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred twentieth (120th) day before such special meeting and not later than the close of business on the later of the ninetieth (90th) day before such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. To be in proper form for purposes of this Paragraph (B) of this Section 5, such notice shall set forth the information required by clauses (a), (b), (e) and (f), and clauses (c) and (g) in the case of director nominations or clause (d) in the case of other business, as applicable, of Paragraph (A)(3) of this Section 5.

(3) Subject to the proviso in Section 3, only such persons who are nominated in accordance with the procedures set forth in Paragraph (B) of this Section 5 (including those persons nominated by or at the direction of the Board of Directors) shall be eligible to be elected at a special meeting of stockholders of the Corporation to serve as directors. Only such business shall be conducted at a special meeting of stockholders requested by a stockholder as shall have been brought before the meeting in accordance with the procedures set forth in Paragraph (B) of this Section 5. Except as otherwise provided by applicable law, the chair of a special meeting of stockholders shall have the power and duty (a) if the facts warrant, to determine that a nomination proposed to be made at, or any business proposed to be brought before, the special meeting was not made or was not proposed, as the case may be, in accordance with the procedures set forth in Paragraph (B) of this Section 5, and (b) if any proposed nomination or business was not made or was not proposed in compliance with Paragraph (B) of this Section 5, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted.

(C) Action by Written Consent.

(1) Unless otherwise provided in the Certificate of Incorporation or by applicable law, any corporate action required to be taken at any annual or special meeting of stockholders of the Corporation, or any corporate action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting and without a vote, if consents in writing, solicited, executed and delivered in accordance with these By-Laws, the Certificate of Incorporation and applicable law, setting forth the corporate action so taken, shall be signed and delivered to the Corporation and not revoked by the holders of the Corporation's outstanding common stock having not less than the minimum number of votes that would be necessary to authorize or take such corporate action at a meeting at which all shares entitled to vote thereon were present and voted.

(2) Nominations of persons for election to the Board of Directors by written consent and the proposal of business to be acted upon by the stockholders may be made by written consent only (a) by or at the direction of the Board of Directors or (b) subject to the Certificate of Incorporation, by any stockholder of the Corporation (i) who was a Record Stockholder of the Corporation (and, with respect to

any beneficial owner, if different, on whose behalf such nomination or nominations (if a purpose for such action by written consent is the election of one or more directors) are made or such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) at the time set forth in Paragraph (C)(3) of this Section 5, (ii) who is entitled to act by written consent upon such election of directors or upon such business, as the case may be, and (iii) who complies with the procedures set forth in Paragraph (C)(3) of this Section 5; provided, however, that a stockholder may nominate persons for election by written consent only to such position(s) as specified in the request submitted to the Corporation in accordance with Paragraph (C)(3) of this Section 5. The foregoing clause (b) shall be the exclusive means for a stockholder to make nominations of directors or propose business to be acted upon by written consent. Notwithstanding anything to the contrary in these By-Laws, nominations made pursuant to Section 13 of Article II of these By-Laws may not be made by action by written consent. In addition, for business (other than the nomination of persons for election to the Board of Directors) to be properly acted upon by written consent, such business must be a proper matter for stockholder action pursuant to the Certificate of Incorporation, these By-Laws and applicable law.

(3) Any stockholder of the Corporation seeking to have the stockholders authorize or take corporate action by written consent without a meeting shall, by written request addressed to the Secretary of the Corporation at the principal executive offices of the Corporation and signed by Record Stockholders of not less than twenty-five percent (25%) of the Corporation's outstanding common stock (the "Written Consent Requisite Percentage"), that shall continue to be Record Stockholders of not less than the Written Consent Requisite Percentage through the date that consents signed by a sufficient number of stockholders to take such action are so delivered to the Corporation and that shall not revoke such request, request that a record date be fixed for such purpose. To be in proper form for purposes of this Paragraph (C) of this Section 5, such request shall set forth the information required by clauses (a), (b), (e) and (f), and clauses (c) and (g) in the case of director nominations or clause (d) in the case of other business, as applicable, of Paragraph (A)(3) of this Section 5. Following delivery of the request, the Board of Directors shall determine the validity of the request and whether the request relates to an action that

may be taken by written consent and, if appropriate, adopt a resolution fixing the record date for such purpose in accordance with Section 5 of Article V of these By-Laws. If the Board of Directors shall determine that any request was not properly made in accordance with, or relates to an action that may not be effected by written consent pursuant to this Paragraph (C) of this Section 5, or any stockholder seeking to authorize or take such action does not otherwise comply with this Paragraph (C) of this Section 5, then the Board of Directors shall not be required to fix a record date and any such purported action by written consent shall be null and void to the fullest extent permitted by applicable law.

(4) The Corporation may require the Record Stockholder(s) submitting such request to furnish such other information as may be requested by the Corporation to determine whether the request relates to an action that may be effected by written consent under this Paragraph (C) of this Section 5. Any Record Stockholder delivering a request required by this Paragraph (C) of this Section 5 may revoke such request at any time by written revocation delivered by certified mail to the Secretary of the Corporation at the principal executive offices of the Corporation. Any disposition by a Record Stockholder delivering a request required by this Paragraph (C) of this Section 5 of any capital stock of the Corporation (or of beneficial ownership of such shares by the beneficial owner on whose behalf the request was made) after the date of such request shall be deemed a revocation of the request with respect to such shares, and each such Record Stockholder and the applicable beneficial owner shall certify to the Secretary of the Corporation on the day prior to the record date set for the corporate action by written consent as to whether any such disposition has occurred. If at any time the unrevoked requests represent in the aggregate less than the Written Consent Requisite Percentage, the Board of Directors, in its discretion, may determine that the action by written consent has been revoked entirely.

(5) Stockholders are not entitled to act by written consent if in the good faith determination of the Board of Directors, which determination shall be conclusive and binding on the Corporation and its stockholders, (a) the request for a record date for such action does not comply with these By-Laws, (b) the action relates to an item of business that is not a proper subject for stockholder action under applicable

law or (c) the request for a record date for such action was made in a manner that involved a violation of Regulation 14A under the Securities Exchange Act of 1934, as amended, or other applicable law.

(6) Stockholders may take action by written consent only if consents are solicited by the stockholders or group of stockholders seeking to take action by written consent from all Record Stockholders entitled to vote on the matter in accordance with applicable law.

(7) Every written consent purporting to take or authorizing the taking of corporate action and/or related revocations shall bear the date of signature of each stockholder who signs such consent (or revocation), and no such consent shall be effective to take the corporate action referred to therein unless, within 60 days of the date of the earliest dated consent delivered in the manner required by this Paragraph (C) of this Section 5, consents signed by a sufficient number of stockholders to take such action are so delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation and not revoked. Upon the delivery to the Corporation of written consents, the Secretary of the Corporation, or such other officer of the Corporation as the Board of Directors may designate, shall provide for the safe-keeping of such consents and any related revocations and shall promptly conduct such ministerial review of the sufficiency of all consents and any related revocations and of the validity of the action to be taken by written consent as the Secretary of the Corporation, or such other officer of the Corporation as the Board of Directors may designate, as the case may be, deems necessary or appropriate, including, without limitation, whether the Record Stockholders of a number of shares having the requisite voting power to authorize or take the corporate action specified in written consents have given consent; provided, however, that if the action to which the written consent relates is the election or removal of one or more members of the Board of Directors, the Secretary of the Corporation, or such other officer of the Corporation as the Board of Directors may designate, as the case may be, shall promptly designate two persons, who shall not be members of the Board of Directors, to serve as inspectors (“Inspectors”) with respect to such consent, and such Inspectors shall discharge the functions of the Secretary of the Corporation, or such other officer of the Corporation as the Board of Directors may designate, as the case may be, under this Paragraph (C) of Section 5. If after such investigation the Secretary of the Corporation,

such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, determines that the action purported to have been taken is duly authorized by the consents, that fact shall be certified on the records of the Corporation kept for the purpose of recording the proceedings of meetings of stockholders and the consents shall be filed in such records. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have not consented in writing. In conducting the investigation required by this Paragraph (C) of this Section 5, the Secretary of the Corporation, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, may, at the expense of the Corporation, retain special legal counsel and any other necessary or appropriate professional advisors as such person or persons may deem necessary or appropriate and, to the fullest extent permitted by law, shall be fully protected in relying in good faith upon the opinion of such counsel or advisors.

(8) No corporate action in writing without a meeting shall be effective until such date as the Secretary of the Corporation, such other officer of this corporation as the Board of Directors may designate, or the Inspectors, as applicable, certify to the Corporation that the consents delivered to the Corporation in accordance with this Paragraph (C) of this Section 5 represent at least the minimum number of votes that would be necessary to take the corporate action at a meeting at which all shares entitled to vote thereon were present and voted, in accordance with the DGCL, the Certificate of Incorporation or these By-Laws.

(9) Nothing contained in this Paragraph (C) of Section 5 shall in any way be construed to suggest or imply that the Board of Directors of the Corporation or any stockholder shall not be entitled to contest the validity of any consent or related revocations, whether before or after such certification by the Secretary of the Corporation, such other officer of the Corporation as the Board of Directors may designate or the Inspectors, as the case may be, or to take any other action (including, without limitation, the commencement, prosecution or defense of any litigation with respect thereto, and the seeking of injunctive relief in such litigation).

(10) Notwithstanding anything to the contrary set forth above, (x) none of the foregoing provisions of this Paragraph (C) of Section 5 shall apply to any solicitation of stockholder action by written consent by or at the direction of the Board of Directors and (y) nothing in these By-Laws shall prohibit the Board of Directors from submitting matters to stockholders for action by written consent.

(D) General.

(1) A stockholder providing notice of nominations of persons for election to the Board of Directors at an annual or special meeting of stockholders or notice of business proposed to be brought before an annual or special meeting of stockholders shall further update and supplement such notice so that the information provided or required to be provided in such notice pursuant to Paragraph (A)(3)(a) through Paragraph (A)(3)(g) of this Section 5 or pursuant to Section 13 of Article II of these By-Laws shall be true and correct both as of the record date for the determination of stockholders entitled to notice of the meeting and as of the date that is ten (10) business days before the meeting or any adjournment or postponement thereof, and such updated and supplemental information shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation (a) in the case of information that is required to be updated and supplemented to be true and correct as of the record date for the determination of stockholders entitled to notice of the meeting, not later than the later of five (5) business days after such record date or five (5) business days after the public announcement of such record date, and (b) in the case of information that is required to be updated and supplemented to be true and correct as of ten (10) business days before the meeting or any adjournment or postponement thereof, not later than eight (8) business days before the meeting or any adjournment or postponement thereof (or if not practicable to provide such updated and supplemental information not later than eight (8) business days before any adjournment or postponement, on the first practicable date before any such adjournment or postponement). A stockholder providing a request in accordance with Paragraph (C) of this Section 5 for nominations of persons for election to the Board of Directors for action by written consent shall further update and supplement such request so that the information provided or required to be provided in such request pursuant to Paragraph (A)(3)(a) through Paragraph (A)(3)(g) of this Section 5 shall be true as

of the record date for the determination of stockholders entitled to act by written consent and such updated and supplemental information shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than the later of five (5) business days after such record date or five (5) business days after the public announcement of such record date.

(2) Notwithstanding the foregoing provisions of this Section 5 or the provisions of Section 13 of Article II of these By-Laws, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 5 or of Section 13 of Article II of these By-Laws, to be considered a qualified representative of the stockholder, a person must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(3) For purposes of this Section 5 and Section 13 of Article II of these By-Laws, (a) “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press, PRNewswire or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14, or 15(d) of the Exchange Act; (b) “Proposing Person” shall mean (i) the stockholder giving the notice required by Paragraph (A) or Paragraph (B) of this Section 5, or a notice pursuant to Section 13(B) of Article II of these By-Laws, (ii) the Record Stockholders submitting a request pursuant to Paragraph (C) of this Section 5, (iii) the beneficial owner or beneficial owners, if different, on whose behalf such notice is given, and (iv) any affiliates or associates (each within the meaning of Rule 12b-2 under the Exchange Act for purposes of these By-Laws) of such stockholder or beneficial owner.

(4) Notwithstanding the foregoing provisions of these By-Laws or the provisions of Section 13 of Article II of these By-Laws, 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 Article II of these By-Laws. Paragraph (A) of this Section 5 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made pursuant to Rule 14a-8 under the Exchange Act. Nothing in this Section 5 or Section 13 of Article II of these By-Laws shall be deemed to (a) affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor thereto) promulgated under the Exchange Act, (b) confer upon any stockholder a right to have a nominee or any proposed business included in the Corporation's proxy statement (except as and to the extent expressly set forth in Section 13 of Article II of these By-Laws), or (c) affect any rights of the holders of any class or series of Preferred Stock to nominate and elect directors pursuant to and to the extent provided in any applicable provisions of the Certificate of Incorporation.

Section 6. Submission of Questionnaire, Representation and Agreement. To be eligible to be a nominee for election or reelection as a director of the Corporation, a person must (A) deliver (in accordance with the time periods prescribed for delivery of notice under Section 5 of Article II of these By-Laws or under Section 13 of Article II of these By-Laws) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background, qualification and any other matter reasonably necessary to assess the candidacy 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 written request) affirming that such person (1) is not and will not become a party to (a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (b) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the

Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, and (3) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation, and any other policies and guidelines of the Corporation applicable to directors; and (B) provide within five business days of the Corporation's request such additional information as the Corporation determines may be reasonably necessary to assess the candidacy of such person.

Section 7. Adjournments. Any meeting of the stockholders may be adjourned from time to time to 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 days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each Record Stockholder entitled to vote at the meeting.

Section 8. Quorum. Unless otherwise required by law or the Certificate of Incorporation, the holders of a majority of the capital stock of the Corporation issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. For purposes of clarity, a share of the capital stock present at a meeting, but for which there is an abstention or broker non-vote on a particular matter or matters, shall be counted as present and entitled to vote thereat for the purpose of establishing a quorum. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or

represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 7, until a quorum shall be present or represented.

Section 9. Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws, any question brought before any meeting of stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the capital stock represented and entitled to vote thereat, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 5 of Article V hereof, each stockholder represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy but no proxy shall be voted on or after three years from its date, unless such proxy provides for a longer period. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 10. List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, for a period of at least ten 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 either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder of the Corporation who is present. In the event that the Corporation determines to make the list available on an

electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 11. Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 12. Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of the meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chair of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chair, 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 chair of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to Record Stockholders of the Corporation, their duly authorized and constituted proxies or such other persons as the chair of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

Section 13. Proxy Access for Director Nominations.

(A) Whenever the Board of Directors solicits proxies with respect to the election of directors at an annual meeting of the stockholders, subject to the provisions of this Section 13, the Corporation shall include in its proxy statement for such annual meeting, in addition to any persons nominated for election by the Board of Directors or any committee thereof, the name, together with the Required Information (as defined below), of any person or persons, as applicable, nominated for election (each, a “Stockholder Nominee”) to the Board of Directors by any single stockholder that satisfies, or by a group of stockholders that together satisfy, the requirements of Paragraph (E) of this Section 13 (the “Eligible Stockholder”), and who expressly elects at the

time of providing the notice (the “Proxy Access Nomination Notice”) required by this Section 13 to have its nominee or nominees, as applicable, included in the Corporation’s proxy materials. For purposes of this Section 13, the “Required Information” that the Corporation will include in its proxy statement is the information provided to the Secretary of the Corporation concerning each Stockholder Nominee and the Eligible Stockholder nominating such Stockholder Nominee that is required to be disclosed in the Corporation’s proxy statement by Section 14 of the Exchange Act, and the rules and regulations promulgated thereunder, and, if such Eligible Stockholder so elects, a written statement, not to exceed 500 words, in support of such Stockholder Nominee’s candidacy (the “Statement”). Notwithstanding anything to the contrary contained in this Section 13, the Corporation may omit from its proxy materials any information or Statement (or portion thereof) that it, in good faith, believes would violate any applicable law or regulation.

(B) To be timely for purposes of this Section 13, the Proxy Access Nomination Notice and Required Information must be addressed to the Secretary of the Corporation and delivered to or mailed to and received at the principal executive offices of the Corporation not later than the close of business on the one hundred twentieth (120th) day and not earlier than the close of business on the one hundred fiftieth (150th) day before the date of the one-year anniversary of the immediately preceding year’s annual meeting. In no event shall the public announcement of an adjournment or postponement of an annual meeting of stockholders commence a new time period (or extend any time period) for the giving of a Proxy Access Nomination Notice as described above.

(C) The maximum number of Stockholder Nominees nominated by all Eligible Stockholders that will be included in the Corporation’s proxy materials with respect to an annual meeting of stockholders shall not exceed 25% of the number of directors in office as of the last day on which a Proxy Access Nomination Notice may be delivered pursuant to and in accordance with this Section 13 (the “Final Proxy Access Nomination Date”), rounded down to the closest whole number (if 25% is not a whole number). In the event that one or more vacancies for any reason occurs on the Board of Directors after the Final Proxy Access Nomination Date but before the date of the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the maximum number of Stockholder Nominees included in the Corporation’s

proxy materials shall be calculated based on the number of directors in office as so reduced. Any individual nominated by an Eligible Stockholder for inclusion in the Corporation's proxy materials pursuant to this Section 13 whom the Board of Directors decides to nominate as a nominee for director shall be counted as one of the Stockholder Nominees for purposes of determining when the maximum number of Stockholder Nominees provided for in this Section 13 has been reached. Any Eligible Stockholder submitting more than one Stockholder Nominee for inclusion in the Corporation's proxy materials shall rank such Stockholder Nominees based on the order that the Eligible Stockholder desires such Stockholder Nominees to be selected for inclusion in the Corporation's proxy statement in the event that the total number of Stockholder Nominees submitted by Eligible Stockholders exceeds the maximum number of nominees provided for in this Section 13. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders exceeds the maximum number of nominees provided for in this Section 13, the highest ranking Stockholder Nominee who meets the requirements of this Section 13 from each Eligible Stockholder will be selected for inclusion in the Corporation's proxy materials until the maximum number is reached, going in order of the amount (largest to smallest) of shares of common stock of the Corporation each Eligible Stockholder disclosed as owned in its respective Proxy Access Nomination Notice submitted to the Corporation. If the maximum number is not reached after the highest ranking Stockholder Nominee who meets the requirements of this Section 13 from each Eligible Stockholder has been selected, this process will continue as many times as necessary, following the same order each time, until the maximum number is reached. Notwithstanding anything to the contrary contained in this Section 13, if the Corporation receives notice pursuant to Paragraph (A) of Section 5 of Article II of these By-Laws that a stockholder intends to nominate a person for election to the Board of Directors at such meeting, no Stockholder Nominees of such stockholder will be included in the Corporation's proxy materials with respect to such meeting pursuant to this Section 13.

(D) For purposes of this Section 13, an Eligible Stockholder shall be deemed to "own" only those outstanding shares of common stock of the Corporation as to which the stockholder possesses both (i) the full voting and investment rights pertaining to the shares and (ii) the full economic interest in (including the opportunity for profit from and risk of loss on) such shares; provided, that the number of shares calculated in

accordance with clauses (i) and (ii) shall not include any shares (a) sold by such stockholder or any of its affiliates in any transaction that has not been settled or closed, (b) borrowed by such stockholder or any of its affiliates for any purposes or purchased by such stockholder or any of its affiliates pursuant to an agreement to resell or (c) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding common stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of (1) reducing in any manner, to any extent or at any time in the future, such stockholder's or its affiliates' full right to vote or direct the voting of any such shares, and/or (2) hedging, offsetting or altering to any degree any gain or loss realized or realizable from maintaining the full economic ownership of such shares by such stockholder or affiliate. For purposes of this Section 13, a stockholder shall "own" shares held in the name of a nominee or other intermediary so long as the stockholder 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. A stockholder's ownership of shares shall be deemed to continue during any period in which (i) the stockholder has loaned such shares, provided that the stockholder has the power to recall such loaned shares on no more than five (5) business days' notice or (ii) the stockholder has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the stockholder. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Whether outstanding shares of the common stock of the Corporation are "owned" for these purposes shall be determined by the Board of Directors or any committee thereof. For purposes of this Section 13, the term "affiliate" shall have the meaning ascribed thereto under Rule 12b-2 under the Exchange Act.

(E) In order to make a nomination pursuant to this Section 13, an Eligible Stockholder must have owned the Required Ownership Percentage (as defined below) of the Corporation's outstanding common stock (the "Required Shares") continuously for the Minimum Holding Period (as defined below) as of both the date the Proxy Access Nomination Notice is delivered to or mailed to and received by the Secretary in accordance with this Section 13 and the record date for determining the stockholders entitled to vote at the annual meeting and

must continue to own the Required Shares through the meeting date. For purposes of this Section 13, the “Required Ownership Percentage” is 3% or more, and the “Minimum Holding Period” is three (3) years. Within the time period specified in this Section 13 for delivering the Proxy Access Nomination Notice, in order for a Proxy Access Nomination Notice to be effective, the Eligible Stockholder submitting the Proxy Access Nomination Notice must provide the following information in writing to the Secretary: (i) one or more written statements from the record holder of the shares (and from each intermediary through which the shares are or have been held during the Minimum Holding Period) verifying that, as of a date within seven calendar days prior to the date the Proxy Access Nomination Notice is delivered to or mailed to and received by the Secretary, the Eligible Stockholder owns, and has owned continuously for the Minimum Holding Period, the Required Shares, and the Eligible Stockholder’s agreement to provide, within five business days after the record date for the annual meeting, written statements from the record holder and intermediaries verifying the Eligible Stockholder’s continuous ownership of the Required Shares through the record date; (ii) a copy of the Schedule 14N that has been filed with the Securities and Exchange Commission as required by Rule 14a-18 under the Exchange Act; (iii) the information, representations and agreements that are the same as those that would be required to be set forth in a stockholder’s notice of nomination pursuant to Paragraph (A)(3) of Section 5 of Article II of these By-Laws; (iv) the consent of each Stockholder Nominee to being named in the proxy statement as a nominee and to serving as a director if elected; (v) a representation and covenant that the Eligible Stockholder (a) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have such intent, (b) presently intends to maintain qualifying ownership of the Required Shares through the date of the annual meeting, (c) has not engaged and will not engage in, and has not and will not be a “participant” in another person’s “solicitation” within the meaning of Rule 14a-1(1) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (d) will comply with all applicable laws and regulations applicable to the use, if any, of soliciting material, (e) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation, (f) has not nominated and will not nominate for election to the Board of Directors at the annual meeting of the stockholders any person other than the

Stockholder Nominee(s) being nominated pursuant to this Section 13, and (g) will provide facts, statements and other information in all communications with the Corporation and its stockholders that are or will be true and correct in all material respects and do not and will not omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; (vi) a statement as to the Eligible Stockholder's intent with respect to continued ownership of the Required Shares following the annual meeting; (vii) an undertaking that the Eligible Stockholder (a) assumes all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (b) will indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or actual action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 13, (c) with respect to any shares held or controlled by the Eligible Stockholder, will not, if otherwise permitted under these By-Laws or the Certificate of Incorporation, cumulate votes in favor of the election of any Stockholder Nominees nominated by the Eligible Stockholder, and (d) will provide to the Corporation prior to the election of directors such additional information as reasonably requested by the Corporation with respect thereto.

(F) Within the time period specified in this Section 13 for delivering the Proxy Access Nomination Notice, each Stockholder Nominee must deliver to the Secretary the representations, agreements and other information required by Paragraph (A)(3) of Section 5 of Article II of these By-Laws and by Section 6 of Article II of these By-Laws.

(G) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominee to the Corporation or its stockholders ceases to be true and correct in all material respects or omits a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading, each Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary of any such defect in such previously provided information and of the information that is required to correct any such defect.

(H) The Corporation shall not be required to include, pursuant to this Section 13, a Stockholder Nominee in its proxy materials for any meeting of the stockholders (i) for which the Secretary receives a notice that a stockholder has nominated such Stockholder Nominee for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for election to the Board of Directors set forth in Paragraph (A) of Section 5 of Article II of these By-Laws, (ii) if the Eligible Stockholder that has nominated such Stockholder Nominee has engaged in or is currently engaged in, or has been or is a “participant” in another person’s “solicitation” within the meaning of Rule 14a-1(1) under the Exchange Act in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee(s) or a nominee of the Board of Directors, (iii) if the Stockholder Nominee is or becomes a party to any compensatory payment or other financial agreement, arrangement or understanding with any person or entity other than the Corporation, or is receiving or will receive any such compensation or other payment from any person or entity other than the Corporation, in each case in connection with service as a director of the Corporation, (iv) who is not independent under the listing standards of each principal U.S. exchange upon which the common stock of the Corporation is listed, any applicable rules of the Securities and Exchange Commission, or any publicly disclosed standards used by the Board of Directors in determining and disclosing independence of the Corporation’s directors, in each case as determined by the Board of Directors or any committee thereof, (v) whose election as a member of the Board of Directors would cause the Corporation to be in violation of these By-Laws, the Certificate of Incorporation, the rules and listing standards of the principal U.S. exchanges on which the common stock of the Corporation is traded, or any applicable state or federal or other law, rule or regulation, (vi) who is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, (vii) who is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in such a criminal proceeding within the past 10 years, (viii) who is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, (ix) if such Stockholder Nominee or the applicable Eligible Stockholder shall have provided information to the Corporation in respect to such nomination that was untrue in any material respect or omitted to state a material fact necessary in order to make the statement made, in light of the circumstances under which it was made, not

misleading, as determined by the Board of Directors or any committee thereof, or (x) the Eligible Stockholder or applicable Stockholder Nominee fails to comply with its obligations pursuant to this Section 13.

(I) Notwithstanding anything to the contrary set forth herein, the Board of Directors or the presiding officer of the annual meeting of stockholders shall declare a nomination by an Eligible Stockholder to be invalid, and (i) such nomination shall be disregarded and no vote on such Stockholder Nominee shall occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, (ii) the Corporation shall not be required to include in its proxy statement or on any ballot or form of proxy the disregarded Stockholder Nominee or any successor or replacement nominee proposed by the Eligible Stockholder or by any other Eligible Stockholder, and (iii) the Corporation may otherwise communicate to its stockholders, including by amending or supplementing its proxy statement or ballot or form of proxy, that the Stockholder Nominee or any successor or replacement nominee shall not be included as a director nominee in the proxy statement or on any ballot or form of proxy and shall not be voted on at the annual meeting if: (i) the Stockholder Nominee(s) and/or the applicable Eligible Stockholder shall have breached its or their obligations under this Section 13 or otherwise failed to satisfy the terms and conditions of this Section 13, as determined by the Board of Directors or such presiding officer, (ii) the Eligible Stockholder (or a qualified representative thereof) does not appear at the annual meeting of stockholders to present any nomination made pursuant to this Section 13, or (iii) the Eligible Stockholder becomes ineligible or withdraws its nomination or a Stockholder Nominee becomes unwilling to serve on the Board of Directors, whether before or after the mailing of the definitive proxy statement.

(J) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (i) withdraws from or becomes ineligible or unavailable for election at the annual meeting or (ii) does not receive the favorable vote of at least 25% of the votes cast in the election of directors at the annual meeting, will be ineligible to be a Stockholder Nominee for the following two annual meetings. For the avoidance of doubt, this Section 13 shall not prevent any stockholder from nominating any person for election to the Board of Directors pursuant to and in accordance with Paragraph (A) of Section 5 of Article II of these By-Laws.

(K) This Section 13 shall be the exclusive method for stockholders to include nominees for election to the Board of Directors in the Corporation's proxy materials.

### ARTICLE III

#### DIRECTORS

Section 1. Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than 13 members, the exact number of which shall be fixed by the Board of Directors. Except as otherwise provided in the Certificate of Incorporation or in Section 2 of this Article III of these By-Laws, each director shall be elected by the vote of the majority of the votes cast with respect to the election of directors at any annual meeting of stockholders; provided, however, that directors shall be elected by a plurality of the votes cast with respect to the election of directors at any annual meeting of stockholders for which the Secretary of the Corporation determines that the number of nominees exceeds the number of directors to be elected as of the record date for such annual meeting of stockholders. A majority of votes cast means that the number of shares cast "for" a director's election exceeds the number of withhold votes or against votes cast for that director. The following shall not be votes cast: (i) a share otherwise present at the meeting but for which there is an abstention; and (ii) a share otherwise present at the meeting as to which a stockholder gives no authority or direction as to such matter. Each director elected at an annual meeting of stockholders shall hold office until the next annual meeting of stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Any director may resign at any time upon written notice to the Corporation. Directors need not be stockholders.

Section 2. Vacancies. Unless otherwise required by law or the Certificate of Incorporation, vacancies arising through death, resignation (including in connection with the stockholders failing at any annual meeting of stockholders to elect the number of directors then constituting the whole Board of Directors), removal, an increase in the number of directors or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director, and the directors so chosen shall hold office until the

next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal.

Section 3. Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which 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 required to be exercised or done by the stockholders.

Section 4. Meetings. The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors. Special meetings of the Board of Directors may be called by the Chair, if there be one, the Vice Chair, if there be one, the Chief Executive Officer or by any two directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone, electronic mail, electronic board portal or other electronic transmission on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 5. Quorum. Except as otherwise required by law or the Certificate of Incorporation, at all meetings of the Board of Directors, a majority of the entire Board of Directors shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 6. Actions by Written Consent. Unless otherwise provided in the Certificate of Incorporation, or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of

Directors or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

Section 7. Meetings by Means of Electronic Conference. Unless otherwise provided in the Certificate of Incorporation, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone, video conference or similar 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 7 shall constitute presence in person at such meeting.

Section 8. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors 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 any such committee. In the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee or as otherwise authorized by the Board of Directors (including through adoption of or amendment to any committee charter), shall have and may exercise all the powers and authority of the Board of Directors under these By-Laws or otherwise in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required.

Section 9. Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary as director, payable in cash or securities. No such payment shall preclude any director

from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

Section 10. Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because the director or officer's vote is counted for such purpose if (i) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

Section 11. Ex Officio Members of the Board of Directors. The Board of Directors, in its discretion, may appoint one or more persons as ex officio members of the Board of Directors, who shall serve at the pleasure of the Board of Directors. Ex officio members of the Board of Directors shall be permitted to attend meetings of the Board of Directors but shall not be entitled to vote on any matter before the Board of Directors and shall not be considered to be directors of the Corporation for any other purpose, including without limitation, for

establishing a quorum, acting by written consent or providing notice of meetings. Notwithstanding the foregoing, the Board of Directors may hold meetings that do not include ex officio members of the Board of Directors.

#### ARTICLE IV

##### OFFICERS

Section 1. General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a Chief Executive Officer, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chair of the Board of Directors (who must be a director), a Vice Chair of the Board of Directors (who must be a director), a Lead Independent Director (who must be a director and meet applicable independence requirements), a President and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law or the Certificate of Incorporation. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chair, the Vice Chair or the Lead Independent Director, need such officers be directors of the Corporation.

Section 2. Election. The Board of Directors, from time to time as it shall deem necessary or appropriate, shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and all officers of the Corporation shall hold office until their successors are chosen and qualified, or until their earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the affirmative vote of the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 3. Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the Chief Executive Officer, the President or any Vice President or any other officer authorized to do so by the Board of Directors or any committee of the Board of

Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors or any committee of the Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4. Chair of the Board of Directors. The Chair, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chair shall be the Chief Executive Officer of the Corporation, unless the Board of Directors designates another person to serve as the Chief Executive Officer, and except where by law the signature of the Chief Executive Officer is required, the Chair shall possess the same power as the Chief Executive Officer to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. The Chair shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 5. Vice Chair. In the absence of the Chair, the Vice Chair, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. Except where by law the signature of the Chief Executive Officer is required, the Vice Chair shall possess the same power as the Chief Executive Officer to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the Chair, the Vice Chair shall exercise all powers and discharge all the duties of the Chair. The Vice Chair shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 6. Lead Independent Director. If the Chair does not meet applicable independence requirements or if the Board of Directors otherwise desires, the Board of Directors may appoint one of its members (who must meet applicable independence requirements) as the Board's Lead Independent Director. The

Lead Independent Director, if there be one, shall perform such duties and exercise such powers as may from time to time be assigned by these By-Laws, applicable law or regulatory requirement or by the Board of Directors.

Section 7. Chief Executive Officer. The Chief Executive Officer shall, subject to the control of the Board of Directors and the Chair (if the Chair is not the Chief Executive Officer), have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors and its committees are carried into effect. The Chief Executive Officer shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the Chief Executive Officer. If any bond, mortgage, contract and other instrument of the Corporation is required by law or otherwise to be signed by the president of a corporation and the Corporation does not have a President, the Chief Executive Officer shall be deemed to be the President of the Corporation and shall have the authority to execute such document. In the absence or disability of the Chair and the Vice Chair, or if there be none, the Chief Executive Officer shall preside at all meetings of the stockholders and the Board of Directors. The Chief Executive Officer shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 8. President. At the request of the Chief Executive Officer or in the Chief Executive Officer's absence or in the event of the Chief Executive Officer's inability or refusal to act (and if there be no Chair or Vice Chair), the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. The President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe.

Section 9. Vice Presidents. At the request of the Chief Executive Officer or in the Chief Executive Officer's absence or in the event of the Chief Executive Officer's inability or refusal to act (and if there be no Chair, Vice Chair or President), the Vice President, or the Vice Presidents if there is more than one (in the order designated by the Board of Directors), shall perform the duties of the Chief Executive Officer, and when so

acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer. Each Vice President shall perform such other duties and have such other powers as the Board of Directors or the Chief Executive Officer from time to time may prescribe. If there be no Chair, Vice Chair, President and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the Chief Executive Officer or in the event of the inability or refusal of the Chief Executive Officer to act, shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chief Executive Officer.

Section 10. Secretary. The Secretary's duties include attending meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also have like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chair, the Vice Chair or the Chief Executive Officer, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the Chief Executive Officer may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority and, with respect to matters within its authority, any committee of the Board of Directors may give special authority, to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 11. Chief Financial Officer. The Chief Financial Officer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit

of the Corporation in such depositories as may be designated or authorized by the Board of Directors or any committee thereof. The Chief Financial Officer shall disburse the funds of the Corporation as may be ordered or authorized by the Board of Directors or any committee thereof, taking proper vouchers for such disbursements, and shall render to the Chief Executive Officer and the Board of Directors or any committee thereof, at its regular meetings, or when the Board of Directors or any such committee so requires, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation.

Section 12. Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chief Executive Officer, President, if there be one, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 13. Treasurer; Assistant Treasurers. The Chief Financial Officer shall, unless another person is so designated by the Corporation, be the Treasurer of the Corporation. The Corporation may designate others as Treasurer or as Assistant Treasurers of the Corporation, and any such persons shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the Chief Executive Officer, President, if there be one, the Chief Financial Officer, any Vice President, if there be one, or the Treasurer (in the case of Assistant Treasurers). In the absence of the Treasurer or in the event of the Treasurer's disability or refusal to act, any Assistant Treasurer shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer.

Section 14. Other Officers. Such other officers as the Board of Directors or the Chief Executive Officer may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, any committee thereof or the Chief Executive Officer. The Board of Directors or the

Chief Executive Officer may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

## ARTICLE V

### CAPITAL STOCK

Section 1. Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed, in the name of the Corporation (i) by the Chair, Vice Chair, the Chief Executive Officer, President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

Section 2. Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 3. Lost Certificates. The Board of Directors, any committee thereof or any officer of the Corporation may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate, the Board of Directors, any committee thereof or any officer of the Corporation may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or the owner's legal representative, to advertise the same in such manner as the Board of Directors, any committee thereof or any officer of the Corporation shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed or the issuance of such new certificate.

Section 4. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation 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, which shall be cancelled before a new certificate shall be issued. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of Record Stockholders entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; providing, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) If stockholders are permitted to act by written consent under the Certificate of Incorporation, as in effect from time to time, in order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner described in Section 5 of Article II of

these By-Laws. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolutions taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

## ARTICLE VI

### NOTICES

Section 1. Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the

time when the same shall be deposited in the United States mail. Written notice may also be given personally or by electronic mail or other electronic transmission.

Section 2. Waivers of Notice. Whenever any notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed, by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the 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.

## ARTICLE VII

### GENERAL PROVISIONS

Section 1. Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the DGCL and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 6 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for

repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 2. Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors or any committee thereof may from time to time designate, authorize or approve.

Section 3. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 4. Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE VIII

### AMENDMENTS

Section 1. Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors, provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 2. Entire Board of Directors. As used in this Article VIII and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

Adopted as of:            June 4, 2021

**Booking Holdings Inc.**  
**1999 Omnibus Plan**  
**(As Amended and Restated Effective June 3, 2021)**

1. *Establishment and Purpose.*

The Booking Holdings Inc. 1999 Omnibus Plan (the “Plan”) is hereby amended and restated in its entirety, effective as of June 3, 2021. The Plan is intended to promote the interests of Booking Holdings Inc. (the “Company”) by providing employees of the Company with appropriate incentives and rewards to encourage them to enter into and continue in the employ of the Company and to acquire a proprietary interest in the long-term success of the Company; and to reward the performance of individual officers, other employees, consultants and directors in fulfilling their responsibilities for long-range achievements.

2. *Definitions.*

As used in the Plan and any Agreement, the following definitions apply to the terms indicated below (unless otherwise defined in an Agreement):

- (a) “Affiliate” shall mean an affiliate of the Company, as defined in Rule 12b-2 promulgated under Section 12 of the Exchange Act.
- (b) “Agreement” shall mean the written agreement between the Company and a Participant evidencing an Award. The Agreement may be in an electronic medium, may be limited to notation on the books and records of the Company and, unless otherwise determined by the Board, need not be signed by a representative of the Company or a Participant.
- (c) “Award” shall mean any Option, Restricted Stock or Other Stock-Based Award granted under the Plan.
- (d) “Beneficial Owner” shall have the meaning set forth in Rule 13d-3 under the Exchange Act.
- (e) “Board” shall mean the Board of Directors of the Company.
- (f) “Cause” shall mean (i) the willful and continued failure by the Participant substantially to perform his or her duties and obligations to the Company (other than any such failure resulting from his or her incapacity due to physical or mental illness); (ii) the willful engaging by the Participant in misconduct which is materially injurious to the Company; (iii) the commission by the Participant of a felony; (iv) the commission by the Participant of a crime against the Company which is materially injurious to the Company; (v) the Participant’s willful and material violation of any Company code of conduct; (vi) the Participant’s material breach of any non-competition, non-solicitation, or other restrictive covenant that the Participant enters into with the Company or a Subsidiary; or (vii) the Participant’s willful and material breach of any confidentiality agreement that the Participant enters into with the Company or a Subsidiary. For purposes of this Section 2(f), no act, or failure to act, on a Participant’s part shall be considered “willful” unless done, or omitted to be done, by the Participant in bad faith and without reasonable belief that his or her action or omission was in the best interest of the Company. Determination of Cause shall be made by the Committee in its sole discretion.
- (g) “Change in Control” shall mean the occurrence of any one of the following events:
  - (i) any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company representing thirty-five percent (35%) or more of the combined voting power of the Company’s then outstanding securities eligible to vote for the election of the Board (the “Company Voting Securities”); provided, however, that the event described in this Section 2(g)(i) shall not be deemed to be a Change in Control if such event results from the acquisition of Company Voting Securities pursuant to a Non-Qualifying Transaction (as defined in Section 2(g)(iii));
  - (ii) individuals who, on the date an Award is granted (the “Grant Date”), constitute the Board (the “Incumbent Directors”) cease for any reason to constitute at least a majority of the Board; provided, however, that any person becoming a director subsequent to the Grant Date, whose election or

nomination for election was approved (either by a specific vote or by approval of the proxy statement of the Company in which such person is named as a nominee for director, without written objection to such nomination) by a vote of at least two-thirds of the directors who were, as of the date of such approval, Incumbent Directors, shall be an Incumbent Director; provided, further, that no individual initially appointed, elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors or as a result of any other actual or threatened solicitation of proxies or consents by or on behalf of any person other than the Board shall be deemed to be an Incumbent Director;

- (iii) the consummation of a merger, consolidation, statutory share exchange or similar form of corporate transaction involving (A) the Company or (B) any of its wholly owned subsidiaries pursuant to which, in the case of this clause (B), Company Voting Securities are issued or issuable (any event described in the immediately preceding clause (A) or (B), a “Reorganization”) or the sale or other disposition of all or substantially all of the assets of the Company to an entity that is not an Affiliate of the Company (a “Sale”), unless immediately following such Reorganization or Sale: (1) more than 50% of the total voting power (in respect of the election of directors, or similar officials in the case of an entity other than a corporation) of (x) the Company (or, if the Company ceases to exist, the entity resulting from such Reorganization), or, in the case of a Sale, the entity which has acquired all or substantially all of the assets of the Company (in either case, the “Surviving Entity”), or (y) if applicable, the ultimate parent entity that directly or indirectly has Beneficial Ownership of more than 50% of the total voting power (in respect of the election of directors, or similar officials in the case of an entity other than a corporation) of the Surviving Entity (the “Parent Entity”), is represented by Company Voting Securities that were outstanding immediately prior to such Reorganization or Sale (or, if applicable, is represented by shares into which such Company Voting Securities were converted pursuant to such Reorganization or Sale), (2) no Person is or becomes the Beneficial Owner, directly or indirectly, of 35% or more of the total voting power (in respect of the election of directors, or similar officials in the case of an entity other than a corporation) of the outstanding voting securities of the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) and (3) at least a majority of the members of the board of directors (or similar officials in the case of an entity other than a corporation) of the Parent Entity (or, if there is no Parent Entity, the Surviving Entity) following the consummation of the Reorganization or Sale were, at the time of the approval by the Board of the execution of the initial agreement providing for such Reorganization or Sale, Incumbent Directors (any Reorganization or Sale which satisfies all of the criteria specified in (1), (2) and (3) above being deemed to be a “Non-Qualifying Transaction”); or
- (iv) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company.

Notwithstanding the foregoing, if any Person becomes the Beneficial Owner, directly or indirectly, of 35% or more of the combined voting power of Company Voting Securities solely as a result of the acquisition of Company Voting Securities by the Company which reduces the number of Company Voting Securities outstanding, such increased amount shall be deemed not to result in a Change in Control; provided, however, that if such Person subsequently becomes the Beneficial Owner, directly or indirectly, of additional Company Voting Securities that increases the percentage of outstanding Company Voting Securities Beneficially Owned by such Person to a percentage equal to or greater than 35, a Change in Control of the Company shall then be deemed to occur.

- (h) “Code” shall mean the Internal Revenue Code of 1986, as amended from time to time, and any regulations promulgated thereunder.
- (i) “Committee” shall mean (i) with respect to the application of this Plan to employees and consultants, a committee established by the Board, which committee shall be intended to consist of two or more Non-Employee Directors, each of whom shall be a “non-employee director” as defined in Rule 16b-3 of the Exchange Act, and (ii) with respect to the application of this Plan to Non-Employee Directors, the Board.
- (j) “Company” shall mean Booking Holdings Inc., a corporation organized under the laws of the State of Delaware, or any assign or successor thereto as provided in Section 32 hereof.

- (k) "Director" shall mean a member of the Board.
- (l) "Disability" shall mean (i) any physical or mental condition that would qualify a Participant for a disability benefit under the long-term disability plan maintained by the Company or an Affiliate and applicable to him or her; (ii) when used in connection with the exercise of an Incentive Stock Option following termination of Employment, disability within the meaning of Section 22(e)(3) of the Code, or (iii) such other condition as may be determined in the sole discretion of the Committee to constitute Disability.
- (m) "Effective Date" shall mean June 3, 2021.
- (n) "Employment" shall mean the employment, directorship or consultancy of a Participant with the Company, its parent or a Subsidiary.
- (o) "Exchange Act" shall mean the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations thereunder.
- (p) "Executive Officer" shall have the meaning set forth in Rule 3b-7 promulgated under the Exchange Act.
- (q) "Fair Market Value" of a share of Stock as of a particular date shall mean the closing sales price per share of Stock on the national securities exchange on which the Stock is principally traded, for the last preceding date on which there was a sale of such Stock on such exchange.
- (r) "Incentive Stock Option" shall mean an Option that is an "incentive stock option" within the meaning of Section 422 of the Code, or any successor provision, and that is designated by the Committee as an Incentive Stock Option.
- (s) "Issue Date" shall mean the date established by the Company on which certificates representing Restricted Stock, if issued, shall be issued by the Company or the date when Restricted Stock is transferred pursuant to the terms of Section 8(e).
- (t) "Non-Employee Director" shall mean a member of the Board who is not a current employee of the Company.
- (u) "Non-Qualified Option" shall mean an Option other than an Incentive Stock Option.
- (v) "Option" shall mean an option to purchase a number of shares of Stock granted pursuant to Section 7.
- (w) "Other Stock-Based Award" shall mean an award granted pursuant to Section 9 hereof.
- (x) "Partial Exercise" shall mean an exercise of an Award for less than the full extent permitted at the time of such exercise.
- (y) "Participant" shall mean (i) an employee, consultant or Non-Employee Director of the Company or a Subsidiary to whom an Award is granted hereunder and (ii) any such person's successors, heirs, executors and administrators, as the case may be, in such capacity.
- (z) "Performance Goals" shall mean performance goals approved by the Committee, which may be based on one or more of the following criteria: (i) pre-tax income or after-tax income, (ii) operating profit, (iii) return on equity, assets, capital or investment, (iv) earnings, (v) earnings before interest, taxes, depreciation and/or amortization, (vi) book value per share, (vii) sales or revenues, (viii) operating expenses, (ix) margins, (x) market share, (xi) gross bookings, (xi) hotel/accommodation room nights, or (xii) price appreciation or other measurement of the change in value of a share of Stock. Where applicable, the Performance Goals may be expressed in terms of attaining a specified level of the particular criteria or the attainment of a percentage increase or decrease in the particular criteria, and may be applied to one or more of the Company, a Subsidiary or Affiliate, or a division or strategic business unit of the Company, or may be applied to the performance of the Company relative to a market index, a group of other companies or a combination thereof, all as determined by the Committee. The Performance Goals may include a threshold level of performance below which no vesting will occur, levels of performance at which specified vesting will occur, and a maximum level of performance at which full vesting will occur. The Committee shall have the authority to make equitable adjustments to the Performance Goals in recognition of, among other things, unusual or non-recurring events affecting the Company or any Subsidiary or Affiliate or the financial statements of the Company or any Subsidiary or Affiliate, in response to changes in applicable

laws or regulations, or to account for items of gain, loss or expense determined to be extraordinary or unusual in nature or infrequent in occurrence or related to the disposal of a segment of a business or related to a change in accounting principles.

- (aa) "Person" shall have the meaning set forth in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company or any Subsidiary, (ii) a trustee or other fiduciary holding securities under an employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, (iv) a corporation or other entity owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of shares of Stock, or (v) the Participant or any group of persons including the Participant, or any entity controlled by the Participant or any group of persons including the Participant; provided the Participant is an executive officer, director or more than 10% owner of Stock.
- (bb) "Plan" shall mean the Booking Holdings Inc. 1999 Omnibus Plan, as may be amended or amended and restated from time to time.
- (cc) "Restricted Stock" shall mean a share of Stock which is granted pursuant to the terms of Section 8 hereof and which is subject to the restrictions set forth in Sections 8(b) and 8(c).
- (dd) "Rule 16b-3" shall mean Rule 16b-3 promulgated under the Exchange Act, as amended from time to time.
- (ee) "Securities Act" shall mean the Securities Act of 1933, as amended from time to time, and the rules and regulations thereunder.
- (ff) "Stock" shall mean shares of the common stock, par value \$.008 per share, of the Company.
- (gg) "Subsidiary" shall mean any corporation, company, partnership, joint venture, unincorporated association or other entity in an unbroken chain of corporations (or other entities) beginning with the Company if, at the time of granting of an Award, each of the corporations, companies, partnerships, joint ventures, unincorporated associations or other entities (other than the last corporation or other entity in the unbroken chain) owns stock (or other ownership interests) possessing 50% or more of the total combined voting power of all classes of stock (or other ownership interests) in one of the other corporations, companies, partnerships, joint ventures, unincorporated associations (or other entities) in the chain; provided, however, for purposes of determining whether any person may be a Participant for purposes of any grant of Incentive Stock Options, "Subsidiary" shall mean any corporation in which the corporation owns or controls directly or indirectly more than 50% of the total combined voting power represented by all classes of stock issued by such corporation at the time of such grant.
- (hh) "Vesting Date" shall mean the date established by the Committee on which Restricted Stock may vest.

### 3. *Stock Subject to the Plan.*

The maximum number of shares of Stock reserved for the grant or settlement of Awards under the Plan shall be 11,595,833 shares (all of which were authorized and available under the Plan on or prior to June 6, 2013), subject to adjustment as provided herein. No more than 1,250,000 shares of Stock may be awarded in respect of Options, no more than 416,666 shares of Stock may be awarded in respect of Restricted Stock and no more than 833,334 shares of Stock may be awarded in respect of Other Stock-Based Awards to a single individual in any given year during the life of the Plan, which amounts shall be subject to adjustment as provided herein. Such shares may, in whole or in part, be authorized but unissued shares or shares that shall have been or may be reacquired by the Company in the open market, in private transactions or otherwise. Subject to Section 17(b), if any shares of Stock subject to an Award are forfeited, cancelled, exchanged or surrendered or if an Award otherwise terminates or expires without a distribution of shares to the holder of such Award, the shares of Stock with respect to such Award shall, to the extent of any such forfeiture, cancellation, exchange, surrender, termination or expiration, again be available for Awards under the Plan and pursuant to the terms of Sections 8(a) and 9.

Notwithstanding anything to the contrary contained herein: (a) shares of Stock tendered in payment of the exercise price of an Option shall not be added to the aggregate plan limit described above; (b) shares of Stock

withheld by the Company to satisfy any tax withholding obligations shall not be added to the aggregate plan limit described above; and (c) shares of Stock that are repurchased by the Company with Option proceeds shall not be added to the aggregate plan limit described above.

Except as provided in an Award Agreement, in the event that the Committee shall determine that any dividend or other distribution (whether in the form of cash, stock, or other property), recapitalization, stock split, reverse split, reorganization, merger, consolidation, spin-off, combination, repurchase, or share exchange, or other similar corporate transaction or event, affects the Stock such that an adjustment is appropriate in order to prevent dilution or enlargement of the rights of holders of Awards under the Plan, then the Committee shall make such equitable changes or adjustments as it deems necessary or appropriate to any or all of (i) the number and kind of shares of Stock or other property (including cash) that may thereafter be issued under this Plan and in connection with Awards, (ii) the number and kind of shares of Stock or other property (including cash) issued or issuable in respect of outstanding Awards, (iii) the exercise price, grant price, or purchase price relating to any Award; provided that, with respect to Incentive Stock Options, such adjustment shall be made in accordance with Section 424(h) of the Code, (iv) the Performance Goals and (v) the individual limitations applicable to Awards.

#### 4. *Administration of the Plan.*

The Plan shall be administered by the Committee. The Committee shall have the authority in its sole discretion, subject to and not inconsistent with the express provisions of the Plan, to administer the Plan and to exercise all the powers and authorities either specifically granted to it under the Plan or necessary or advisable in the administration of the Plan, including, without limitation, the authority to grant Awards; to determine the persons to whom and the time or times at which Awards shall be granted; to determine the type and number of Awards to be granted, the number of shares of Stock to which an Award may relate and the terms, conditions, restrictions and Performance Goals relating to any Award; to determine whether, to what extent, and under what circumstances an Award may be settled, canceled, forfeited, exchanged, or surrendered; to make adjustments in the Performance Goals in recognition of unusual or non-recurring events affecting the Company or the financial statements of the Company or in response to changes in applicable laws, regulations, or accounting principles; to construe and interpret the Plan and any Award; to prescribe, amend and rescind rules and regulations relating to the Plan; to determine the terms and provisions of Agreements; and to make all other determinations deemed necessary or advisable for the administration of the Plan.

The Committee may, to the extent permitted by law, delegate to one or more of its members or to one or more officers of the Company, or to one or more agents or advisors, such duties or powers as it may deem advisable, and the Committee, or any person to whom duties or powers have been delegated as aforesaid, may employ one or more persons to render advice with respect to any responsibility the Board, the Committee or such person may have under the Plan.

The Committee may, in its absolute discretion, without amendment to the Plan, (a) accelerate the date on which any Option granted under the Plan becomes exercisable, waive or amend the operation of Plan provisions respecting exercise after termination of Employment or otherwise adjust any of the terms of such Option, (b) accelerate the Vesting Date or waive any condition imposed hereunder with respect to any Restricted Stock and (c) otherwise adjust any of the terms applicable to any Award; provided, however, in each case, that in the event of the occurrence of a Change in Control, the provisions of Section 10 hereof shall govern the vesting and exercisability schedule of any Award granted hereunder.

No member of the Committee shall be liable for any action, omission or determination relating to the Plan, and the Company shall indemnify (to the extent permitted under Delaware law) and hold harmless each member of the Committee and each other director or employee of the Company to whom any duty or power relating to the administration or interpretation of the Plan has been delegated against any cost or expense (including counsel fees) or liability (including any sum paid in settlement of a claim with the approval of the Committee) arising out of any action, omission or determination relating to the Plan, unless, in either case, such action, omission or

determination was taken or made by such member, director or employee in bad faith and without reasonable belief that it was in the best interests of the Company.

5. *Eligibility.*

Incentive Stock Options shall be granted only to employees (including officers and directors who are also employees) of the Company, its parent or any of its Subsidiaries, who may receive an “incentive stock option” under Section 422 of the Code. All other Awards may be granted to officers, independent contractors, key employees and non-employee directors of the Company or of any of its Subsidiaries and Affiliates.

6. *Awards Under the Plan; Non-Employee Director Grants and Compensation Limit; Agreements*

- (a) *Grants.* The Committee may grant Options, Restricted Stock and Other Stock-Based Awards to Participants in such amounts and on such terms and conditions, not inconsistent with the Plan, as the Committee shall determine in its sole and absolute discretion.
- (b) *Non-Employee Director Grants and Compensation Limit.* The Committee may grant Options, Restricted Stock and Other Stock-Based Awards to Non-Employee Directors in such amounts and on such terms and conditions, not inconsistent with the Plan, as the Committee shall determine in its sole and absolute discretion; provided, however, that no Participant who is a Non-Employee Director may receive compensation in the form of a grant of an Award (calculating the value of any such Award based on the grant date fair value for financial reporting purposes), cash, or other property, or a combination thereof for his or her service as a Non-Employee Director in any one calendar year in excess of \$750,000. If a Non-Employee Director subsequently becomes an employee of the Company while remaining a member of the Board, any Award held under this Plan by such individual at the time of such commencement of Employment will not be affected thereby. Pursuant to this Section 6(b) and pursuant to procedures established by the Committee, Non-Employee Directors may be awarded all or any portion of their annual retainer, meeting fees or other fees in shares of Stock, restricted stock, or other awards under the Plan in lieu of cash.
- (c) *Agreements.* Each Award granted under the Plan shall be evidenced by an Agreement that shall contain such provisions as the Committee may, in its sole and absolute discretion, deem necessary or desirable.

7. *Options.*

- (a) *Identification of Options.* Each Option shall be clearly identified in the applicable Agreement as either an Incentive Stock Option or a Non-Qualified Option.
- (b) *Exercise Price.* Each Agreement with respect to an Option shall set forth the exercise price per share of Stock payable by the Participant to the Company upon exercise of the Option. The exercise price per share of Stock shall be determined by the Committee; provided, however, that in no case shall an Option have an exercise price per share of Stock that is less than the Fair Market Value of a share of Stock as of the date on which the Option is granted.
- (c) *Term and Exercise of Options.*
  - (i) Each Agreement with respect to an Option shall specify the period or periods of continuous service by the Participant with the Company or any Subsidiary that is necessary before the Option or installments thereof will become exercisable. A grant of an Option may provide for the earlier exercise of such Option in the event of a Change in Control. The Committee shall determine the expiration date of each Option; provided, however, that no Option shall be exercisable more than 10 years after the date of grant. Unless the applicable Agreement provides otherwise and except in the event of a Change in Control, no Option shall be exercisable prior to the first anniversary of the date of grant. Furthermore,

no Option granted under this Plan shall provide for the payment of any dividends or dividend equivalents to a Participant.

- (ii) An Option may be exercised for all or any portion of the Stock as to which it is exercisable, provided that no Partial Exercise of an Option shall be for an aggregate exercise price of less than \$100.00. The Partial Exercise of an Option shall not cause the expiration, termination or cancellation of the remaining portion thereof.
- (iii) Each Agreement with respect to an Option shall specify whether the payment for Stock purchased upon the exercise of an Option shall be made by one or a combination of the following means: (A) in cash or by personal check, certified check, bank cashier's check or by wire transfer of immediately available funds; (B) in Stock owned by the Participant valued at their Fair Market Value on the effective date of such exercise; or (C) by such other provision as the Committee may from time to time authorize.
- (iv) To the extent permitted by law, any grant of an Option may provide for deferred payment of the exercise price from the proceeds of sale through a broker on a date satisfactory to the Company of some or all of the shares to which such exercise relates.
- (v) Stock purchased upon the exercise of an Option shall be in the name of the Participant or other person entitled to receive such Stock and transferred or delivered to the Participant or such other person as soon as practicable following the effective date on which the Option is exercised.

(d) *Limitations on Incentive Stock Options.*

- (i) To the extent that the aggregate Fair Market Value of Stock of the Company with respect to which Incentive Stock Options are exercisable for the first time by a Participant during any calendar year under the Plan and any other option plan of the Company (or any Subsidiary) shall exceed \$100,000, such Options shall be treated as Non-Qualified Options. Such Fair Market Value shall be determined as of the date on which each such Incentive Stock Option is granted.
- (ii) No Incentive Stock Option may be granted to an individual if, at the time of the proposed grant, such individual owns (or is attributed to own by virtue of the Code) Stock possessing more than ten (10) percent of the total combined voting power of all classes of stock of the Company or any Subsidiary unless (A) the exercise price of such Incentive Stock Option is at least 110 percent of the Fair Market Value of a share of Stock at the time such Incentive Stock Option is granted and (B) such Incentive Stock Option is not exercisable after the expiration of five years from the date such Incentive Stock Option is granted.

- (e) *Effect of Termination of Employment.* If permitted by Section 409A of the Code, in the event that the Employment of a Participant shall terminate on account of death, Disability, retirement, Change in Control, or termination without Cause (or other special circumstances as determined by the Committee, including termination for good reason), the Committee may, in its sole discretion, accelerate the time at which an Option may be exercised. Notwithstanding the foregoing, no Option shall be exercisable after the expiration of its term.

8. *Restricted Stock.*

- (a) *Issue Date and Vesting Date.* At the time of the grant of Restricted Stock, the Committee shall establish an Issue Date or Issue Dates and a Vesting Date or Vesting Dates with respect to such shares of Restricted Stock. The Committee may divide such shares of Restricted Stock into classes and assign a different Issue Date and/or Vesting Date for each class. If the Participant is employed by the Company on an Issue Date (which may be the date of grant), the specified number of shares of Restricted Stock shall be issued in accordance with the provisions of Section 8(e). Provided that all conditions to the vesting of Restricted

Stock imposed pursuant to Section 8(b) are satisfied, and except as provided in Section 8(g), upon the occurrence of the Vesting Date with respect to Restricted Stock, such Restricted Stock shall vest and the restrictions of Section 8(c) shall lapse. If the vesting conditions are based only on the passage of time, the Vesting Date for the Restricted Stock awarded after June 6, 2013 shall occur at least three years from the date of grant, except that the award may vest ratably during the three-year period and vesting may occur earlier in case of death, Disability, retirement, Change in Control, termination without Cause or other special circumstances (including termination for good reason as determined by the Committee). The Committee may also grant Restricted Stock with vesting conditions that do not meet the requirements set forth in the preceding sentence so long as the aggregate amount of such Restricted Stock awarded under this Plan, when taken together with any Other Stock-Based Awards granted pursuant to the last sentence of Section 9, may not exceed ten (10) percent of the maximum number of additional shares of Stock in the aggregate made available under this amended and restated version of the Plan as specified in Section 3 above.

- (b) *Conditions to Vesting.* At the time of the grant of Restricted Stock, the Committee may impose such restrictions or conditions to the vesting of such Restricted Stock as it, in its absolute discretion, deems appropriate, including the attainment of Performance Goals.
- (c) *Restrictions on Transfer Prior to Vesting.* Prior to the vesting of any Restricted Stock, no transfer of a Participant's rights with respect to such Restricted Stock, whether voluntary or involuntary, by operation of law or otherwise, shall be permitted. Immediately upon any attempt to transfer such rights, such Restricted Stock, and all of the rights related thereto, shall be forfeited by the Participant.
- (d) *Dividends on Restricted Stock.* The Committee will require that any dividends or distributions paid on Restricted Stock be subject to the same restrictions as apply to the Restricted Stock and be held in escrow until all restrictions on such Restricted Stock have lapsed.
- (e) *Book Entry; Issuance of Certificates.* Unless otherwise directed by the Committee, (i) any certificates representing shares of Stock issued, together with the powers relating to the Restricted Stock evidenced by such certificate, shall be held by the Company until all restrictions have lapsed or (ii) all shares of Restricted Stock shall be held at the Company's transfer agent or broker for the Plan in book entry form with appropriate restrictions relating to the transfer of such shares of Restricted Stock.
- (f) *Consequences of Vesting.* Upon the vesting of any Restricted Stock pursuant to the terms hereof, the restrictions of Section 8(c) shall lapse with respect to such Restricted Stock, and reasonably promptly after any Restricted Stock vests, the Company shall cause the shares of Restricted Stock to be free and clear of any restrictions.
- (g) *Effect of Termination of Employment.*
  - (i) Subject to such other provision as the Committee may set forth in the applicable Agreement, and to the Committee's amendment authority pursuant to Section 4, upon the termination of a Participant's Employment for any reason other than Cause, any and all Stock to which restrictions on transferability apply shall be immediately forfeited by the Participant and transferred to, and reacquired by, the Company.
  - (ii) In the event of the termination of a Participant's Employment for Cause, all shares of Restricted Stock granted to such Participant that have not vested as of the date of such termination shall immediately be returned to the Company, together with any dividends or distributions paid on such shares of Stock, in return for which the Company shall repay to the Participant any amount paid by the Participant for such shares of Stock.
- (h) *Special Provisions Regarding Awards.* Notwithstanding anything to the contrary contained herein, Restricted Stock granted pursuant to this Section 8 to Participants may be based on the attainment by the

Company (or a Subsidiary or division of the Company if applicable) of Performance Goals with a performance period of at least one year pre-established by the Committee.

9. *Other Stock-Based Awards*

Other forms of Awards valued in whole or in part by reference to, or otherwise based on, shares of Stock ("Other Stock-Based Awards") may be granted either alone or in addition to other Awards under the Plan. Other Stock-Based Awards may include, without limitation, Awards commonly referred to as restricted stock units, deferred shares or deferred share units, performance shares or performance share units, or stock appreciation rights. Subject to the provisions of the Plan, the Committee shall have sole and complete authority to determine the persons to whom and the time or times at which such Other Stock-Based Awards shall be granted, the number of shares of Stock to be granted pursuant to such Other Stock-Based Awards and all other conditions of such Other Stock-Based Awards, including the attainment of Performance Goals. If the vesting conditions are based only on the passage of time, Other Stock-Based Awards awarded after June 6, 2013 shall vest at least three years from the date of grant, except that the award may vest ratably during the three-year period and vesting may occur earlier in case of death, Disability, retirement, Change in Control, or termination without Cause (or other special circumstances as determined by the Committee, including termination for good reason). Notwithstanding the foregoing, if the vesting conditions are based on the attainment of Performance Goals, Other Stock-Based Awards shall vest at least one year from the date of grant, except that vesting may occur earlier in case of death, Disability, retirement, Change in Control, or termination without Cause (or other special circumstances as determined by the Committee, including termination for good reason). The Committee may also grant Other Stock-Based Awards with vesting conditions that do not meet the requirements set forth in the preceding two sentences so long as the aggregate amount of such Other Stock-Based Awards awarded under this Plan, when taken together with any Restricted Stock granted under this Plan that do not meet the requirements set forth in the fifth sentence of Section 8(a), may not exceed ten (10) percent of the maximum number of additional shares of Stock in the aggregate made available under this amended and restated version of the Plan as specified in Section 3 above.

10. *Change in Control.*

Notwithstanding anything in the Plan to the contrary, with respect to any Award made under this Plan, no acceleration of exercisability, vesting or lapsing shall occur on a Change in Control except to the extent, if any, provided in the specific Award Agreement or as otherwise determined by the Committee or the Board. Notwithstanding anything in the Plan to the contrary, upon the occurrence of a Change in Control, the Company or other person effecting the Change in Control, in his, her, or its discretion, may deliver to the holder of an Award the same kind of consideration that is delivered to the stockholders of the Company as a result of such Change in Control, or, in the case of Options, the Board may cancel all outstanding Options in exchange for consideration in cash or in kind which consideration in both cases shall be equal in value to the higher of (a) the Fair Market Value of those shares of Stock or other securities the holder of such Option would have received had the Option been exercised and no disposition of the shares acquired upon such exercise been made prior to such sale, conveyance or Change in Control, less the exercise price therefor, and (b) the Fair Market Value of those shares of Stock or other securities the holder of the Option would have received had the Option been exercised and no disposition of the shares acquired upon such exercise been made immediately following such sale, conveyance or Change in Control, less the exercise price therefor.

Upon dissolution or liquidation of the Company, all Options and other Awards granted under this Plan shall terminate, but each holder of an Option shall have the right, immediately prior to such dissolution or liquidation, to exercise his or her Option to the extent then exercisable.

11. *Rights as a Stockholder.*

No person shall have any rights as a stockholder with respect to any shares of Stock covered by or relating to any Award until the date of issuance of such shares of Stock. Except as otherwise expressly provided in Section

3(b), no adjustment to any Award shall be made for dividends or other rights prior to the date such shares of Stock are issued.

12. *No Special Employment Rights; No Right to Award.*

Nothing contained in the Plan or any Agreement shall confer upon any Participant any right with respect to the continuation of Employment by the Company or interfere in any way with the right of the Company, subject to the terms of any separate agreement to the contrary, at any time to terminate such Employment or to increase or decrease the compensation of the Participant.

No person shall have any claim or right to receive an Award hereunder. The Committee's granting of an Award to a Participant at any time shall neither require the Committee to grant any other Award to such Participant or other person at any time or preclude the Committee from making subsequent grants to such Participant or any other person.

13. *Securities Matters.*

- (a) The Company shall be under no obligation to effect the registration pursuant to the Securities Act of any interests in the Plan or any Stock to be issued hereunder or to effect similar compliance under any state laws. Notwithstanding anything herein to the contrary, the Company shall not be obligated to cause to be issued or delivered any certificates evidencing Stock pursuant to the Plan or record the Stock in book entry form unless and until the Company is advised by its counsel that the issuance and delivery of such certificates or their notation in book entry form is in compliance with all applicable laws, regulations of governmental authority and the requirements of any securities exchange on which shares of Stock are traded. The Committee may require, as a condition of the issuance and delivery of certificates evidencing shares of Stock pursuant to the terms hereof or the notation of such shares of Stock in book entry form, that the recipient of such shares of Stock make such agreements and representations, and that such certificates or book entry bear such legends, as the Committee, in its sole discretion, deems necessary or desirable.
- (b) The transfer of any shares of Stock hereunder shall be effective only at such time as counsel to the Company shall have determined that the issuance and delivery of such shares of Stock is in compliance with all applicable laws, regulations of governmental authority, and the requirements of any securities exchange on which shares of Stock are traded. The Committee may, in its sole discretion, defer the effectiveness of any transfer of Stock hereunder in order to allow the issuance of such Stock to be made pursuant to registration or an exemption from registration or other methods for compliance available under federal or state securities laws. The Committee shall inform the Participant in writing of its decision to defer the effectiveness of a transfer. During the period of such deferral in connection with the exercise of an Option, the Participant may, by written notice, withdraw such exercise and obtain the refund of any amount paid with respect thereto.

14. *Withholding Taxes.*

To the extent that the Company is required to withhold federal, state, local or foreign taxes or other amounts in connection with any payment made or benefit realized by a Participant or other person under this Plan, it will be a condition to the receipt of such payment or the realization of such benefit that such taxes or other amounts be withheld from such payment or benefit or paid by such Participant or other person, as determined or provided for by the Committee. With respect to such benefits that are to be received in the form of shares of Stock, the Committee will cause the applicable Agreement to specify the manner or manners in which the withholding or payment of such taxes or other amounts will be effected by or on behalf of such Participant or other person, which manner or manners may include, as provided for by the Committee, (a) withholding from the shares of Stock required to be delivered to the Participant a number of shares of Stock having a value equal to the amount required to be withheld or (b) permitting the Participant to deliver to the Company other shares of Stock already held by the Participant with a value equal to any amount required to be withheld. Any shares of Stock used for purposes of such withholding or payment will be valued based on the fair market value of such shares on the

date on which the benefit or payment is to be included in the Participant's income. In no event will the fair market value of any shares of Stock withheld or delivered pursuant to this Section 14 exceed the maximum amount required to be withheld. Participants will also make such arrangements as the Committee may require for the payment of any withholding tax or other obligation that may arise in connection with the disposition of shares of Stock acquired upon the exercise of Options.

15. *Notification of Election Under Section 83(b) of the Code.*

If any Participant shall, in connection with the acquisition of Stock under the Plan, make the election permitted under Section 83(b) of the Code (i.e., an election to include in gross income in the year of transfer the amounts specified in Section 83(b)), such Participant shall notify the Company of such election within 10 days of filing notice of the election with the Internal Revenue Service, in addition to any filing and a notification required pursuant to regulation issued under the authority of Section 83(b) of the Code.

16. *Notification Upon Disqualifying Disposition Under Section 421(b) of the Code.*

Each Participant shall notify the Company of any disposition of Stock issued pursuant to the exercise of an Incentive Stock Option under the circumstances described in Section 421(b) of the Code (relating to certain disqualifying dispositions), within ten (10) days of such disposition.

17. *Amendment or Termination of the Plan.*

(a) The Board may, at any time, suspend or terminate the Plan or revise or amend it in any respect whatsoever; provided, however, that stockholder approval shall be required if an amendment to the Plan (i) would materially increase the benefits accruing to Participants under the Plan, (ii) would materially increase the number of shares which may be issued under the Plan, (iii) would materially modify the requirements for participation in the Plan or (iv) must otherwise be approved by the stockholders of the Company in order to comply with applicable law or the rules of the Nasdaq Stock Market or, if Stock is not traded on the Nasdaq Stock Market, the principal national securities exchange upon which the Stock is traded or quoted. Awards may be granted under the Plan prior to the receipt of such approval but each such grant shall be subject in its entirety to such approval and no award may be exercised, vested or otherwise satisfied prior to the receipt of such approval. Nothing herein shall restrict the Committee's ability to exercise its discretionary authority pursuant to Section 4, which discretion may be exercised without amendment to the Plan. No action hereunder may, without the consent of a Participant, reduce the Participant's rights under any outstanding Award.

(b) The Board will not, without the further approval of the stockholders of the Company, authorize the amendment of any outstanding Option to reduce its exercise price. Furthermore, no Option will be cancelled and replaced with awards having a lower exercise price, or cancelled in exchange for cash or other awards, without further approval of the stockholders of the Company. This Section 17(b) is intended to prohibit the repricing of "underwater" Options and will not be construed to prohibit the adjustments provided for in Section 3 of this Plan and any payments made in connection with a Change in Control contemplated in Section 10 of this Plan.

18. *Transfers Upon Death; Nonassignability.*

Upon the death of a Participant, outstanding Awards granted to such Participant may be exercised only by the executor or administrator of the Participant's estate or by a person who shall have acquired the right to such exercise by will or by the laws of descent and distribution. No transfer of an Award by will or the laws of descent and distribution shall be effective to bind the Company unless the Committee shall have been furnished with (a) written notice thereof and with a copy of the will and/or such evidence as the Committee may deem necessary to establish the validity of the transfer and (b) an agreement by the transferee to comply with all the terms and conditions of the Award that are or would have been applicable to the Participant and to be bound by

the acknowledgments made by the Participant in connection with the grant of the Award. In no event shall any outstanding Award under this Plan be transferred for value.

During a Participant's lifetime, the Committee may permit the transfer, assignment or other encumbrance of an outstanding Option unless (i) such Option is an Incentive Stock Option and the Committee and the Participant intend that it shall retain such status, or (ii) such Option is meant to qualify for the exemptions available under Rule 16b-3, nontransferability is necessary under Rule 16b-3 in order for the award to so qualify and the Committee and the Participant intend that it shall continue to so qualify. Subject to any conditions as the Committee may prescribe, a Participant may, upon providing written notice to the Secretary of the Company, elect to transfer any or all Options granted to such Participant pursuant to the Plan to members of his or her immediate family, including, but not limited to, children, grandchildren and spouse or to trusts for the benefit of such immediate family members or to partnerships in which such family members are the only partners; provided, however, that no such transfer by any Participant may be made in exchange for consideration.

19. *Clawback Policy.*

Any Agreement may provide for an Award to be subject to any clawback policy of the Company that may be in effect from time to time or is required under any applicable law or rules and regulations of the national securities exchange or national securities association on which shares of Stock may be traded.

20. *Failure to Comply.*

In addition to the remedies of the Company elsewhere provided for herein, failure by a Participant (or beneficiary) to comply with any of the terms and conditions of the Plan or the applicable Agreement, unless such failure is remedied by such Participant (or beneficiary) within ten days after notice of such failure by the Company, shall be grounds for the cancellation and forfeiture of such Award, in whole or in part, as the Committee, in its absolute discretion, may determine.

21. *Effective Date and Term of Plan.*

The Plan became effective on the Effective Date and, unless earlier terminated by the Board, the right to grant Awards under the Plan will terminate on the tenth anniversary of the Effective Date. Awards outstanding at Plan termination will remain in effect according to their terms and the provisions of the Plan.

22. *Applicable Law.*

Except to the extent preempted by any applicable federal law, the Plan will be construed and administered in accordance with the laws of the State of Delaware, without reference to its principles of conflicts of law.

23. *Participant Rights.*

No Participant shall have any claim to be granted any award under the Plan, and there is no obligation for uniformity of treatment for Participants. Except as provided specifically herein, a Participant or a transferee of an Award shall have no rights as a stockholder with respect to any shares of Stock covered by any award until the date of the issuance of such shares of Stock.

24. *Unfunded Status of Awards.*

The Plan is intended to constitute an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Agreement shall give any such Participant any rights that are greater than those of a general creditor of the Company.

25. *Beneficiary.*

The Committee may provide that, to the extent acceptable under applicable law, a Participant may file with the Committee a written designation of a beneficiary on such form as may be prescribed by the Committee and may, from time to time, amend or revoke such designation. If no designated beneficiary survives the Participant, the executor or administrator of the Participant's estate shall be deemed to be the Participant's beneficiary.

26. *Interpretation.*

The Plan is designed and intended to comply with Rule 16b-3, and all provisions hereof shall be construed in a manner to so comply.

27. *Severability.*

If any provision of the Plan is held to be invalid or unenforceable, the other provisions of the Plan shall not be affected but shall be applied as if the invalid or unenforceable provision had not been included in the Plan.

28. *Compliance with Section 409A of the Code.*

- (a) To the extent applicable, it is intended that this Plan and any grants made hereunder comply with the provisions of Section 409A of the Code, so that the income inclusion provisions of Section 409A(a)(1) of the Code do not apply to the Participants. This Plan and any grants made hereunder shall be administered in a manner consistent with this intent. Any reference in this Plan to Section 409A of the Code will also include any regulations or any other formal guidance promulgated with respect to such Section by the U.S. Department of the Treasury or the Internal Revenue Service.
- (b) Neither a Participant nor any of a Participant's creditors or beneficiaries shall have the right to subject any deferred compensation (within the meaning of Section 409A of the Code) payable under this Plan and grants hereunder to any anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, attachment or garnishment. Except as permitted under Section 409A of the Code, any deferred compensation (within the meaning of Section 409A of the Code) payable to a Participant or for a Participant's benefit under this Plan and grants hereunder may not be reduced by, or offset against, any amount owing by a Participant to the Company or any of its Affiliates.
- (c) If, at the time of a Participant's separation from service (within the meaning of Section 409A of the Code), (i) the Participant shall be a specified employee (within the meaning of Section 409A of the Code and using the identification methodology selected by the Company from time to time) and (ii) the Company shall make a good faith determination that an amount payable hereunder constitutes deferred compensation (within the meaning of Section 409A of the Code) the payment of which is required to be delayed pursuant to the six-month delay rule set forth in Section 409A of the Code in order to avoid taxes or penalties under Section 409A of the Code, then the Company shall not pay such amount on the otherwise scheduled payment date but shall instead pay it, without interest, on the first business day of the first month after such six-month period.
- (d) Notwithstanding any provision of this Plan and grants hereunder to the contrary, in light of the uncertainty with respect to the proper application of Section 409A of the Code, the Company reserves the right to make amendments to this Plan and grants hereunder as the Company deems necessary or desirable to avoid the imposition of taxes or penalties under Section 409A of the Code. In any case, a Participant shall be solely responsible and liable for the satisfaction of all taxes and penalties that may be imposed on a Participant or for a Participant's account in connection with this Plan and grants hereunder (including any taxes and penalties under Section 409A of the Code), and neither the Company nor any of its Affiliates shall have any obligation to indemnify or otherwise hold a Participant harmless from any or all of such taxes or penalties.

29. *Non-U.S. Participants.*

In order to facilitate the making of any grant or combination of grants under this Plan, the Committee may provide for such special terms for awards to Participants who are foreign nationals or who are employed by, or provide services to, the Company or any Subsidiary outside of the United States of America or who provide services to the Company or a Subsidiary under an agreement with a foreign nation or agency, as the Committee may consider necessary or appropriate to accommodate differences in local law, tax policy or custom. Moreover, the Committee may approve such supplements to or amendments, restatements or alternative versions of this Plan as it may consider necessary or appropriate for such purposes, without thereby affecting the terms of this Plan (including, without limitation, sub-plans) as in effect for any other purpose, and the Secretary or other appropriate officer of the Company may certify any such document as having been approved and adopted in the same manner as this Plan. No such special terms, supplements, amendments or restatements, however, will include any provisions that are inconsistent with the terms of this Plan as then in effect unless this Plan could have been amended to eliminate such inconsistency without further approval by the stockholders of the Company.

30. *Contrary to Law.*

No award under this Plan may be exercised by the holder thereof if such exercise, and the receipt of cash or stock thereunder, would be, in the opinion of counsel selected by the Board, contrary to law or the regulations of any duly constituted authority having jurisdiction over this Plan.

31. *Leave of Absence.*

Absence on leave approved by a duly authorized representative of the Company or any Subsidiary shall not be considered an interruption or termination of service of any employee for any purpose of this Plan or Awards granted hereunder unless otherwise (a) set forth in any applicable leave of absence policy or program of the Company or any Subsidiary or (b) agreed to by the employee as a condition to the leave of absence.

32. *Successors and Assigns.*

All obligations of the Company under the Plan and with respect to Awards will be binding on any assign or successor to the Company, whether the existence of the successor is the result of a direct or indirect purchase, merger, consolidation, or other event, or a sale or disposition of all or substantially all of the business and/or assets of the Company, and references to the "Company" in the Plan and in any Agreement will be deemed to refer to such assigns or successors.