

**SECOND AMENDED AND RESTATED BY-LAWS  
OF  
NEW TMW TOPCO INC.**

**(as of March 5, 2021)**

**ARTICLE 1  
OFFICES**

Section 1.01. *Registered Office.* The registered office of New TMW Topco Inc. (the “Corporation”) in the State of Delaware shall be as set forth in the Second Amended and Restated Certificate of Incorporation of the Corporation (as amended from time to time, the “Certificate”).

Section 1.02. *Other Offices.* The Corporation may also have offices at such other places both within and without the State of Delaware as the Board of Directors of the Corporation (the “Board”) may from time to time determine or the business of the Corporation may require.

Section 1.03. *Books.* The books of the Corporation may be kept within or without the State of Delaware as the Board may from time to time determine or the business of the Corporation may require.

**ARTICLE 2  
MEETINGS OF STOCKHOLDERS**

Section 2.01. *Time and Place of Meetings.* All meetings of the stockholders of the Corporation shall be held at such place, either within or without the State of Delaware, on such date and at such time as may be determined from time to time by the Board. Notwithstanding the foregoing, the Board may, in its sole discretion, determine that a meeting of stockholders will not be held at any place, but may instead be held by means of remote communications pursuant to Section 2.02. If remote access is not provided for a meeting, the meeting must be held in a place that is reasonably accessible to stockholders (as determined by the Board in its sole discretion).

Section 2.02. *Remote Communication.* If authorized by the Board in its sole discretion, and subject to such guidelines and procedures as the Board may adopt, stockholders and proxy holders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication; *provided*, that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such votes or other action shall be maintained by the Corporation.

Section 2.03. *Annual Meetings.* Unless directors are elected by written consent in lieu of an annual meeting as permitted by the General Corporation Law of the State of Delaware (as the same exists or may hereafter be amended, the “DGCL”), an annual meeting of stockholders shall be held for the election of directors and to transact such other business as may properly be brought before the meeting. The date of each annual meeting of stockholders shall be no later than thirteen (13) months after the date of the immediately preceding annual meeting (or, in the case of the first annual meeting, no later than thirteen (13) months after the date hereof (the “Effective Date”) but no earlier than a date in calendar year 2022).

Section 2.04. *Action by Written Consent of Stockholders.* Stockholders may, unless the Certificate or applicable law otherwise provides, take any action required or permitted to be taken at any meeting of the stockholders without a meeting, if stockholders 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 consent in writing or electronic submission; *provided*, that prompt notice must be given to all stockholders of the taking of corporate action without a meeting when such action is taken by less than unanimous written consent; *provided, further*, that such written notice will be delivered not less than ten (10) days following such action, except for elections and designations of directors in accordance with this Section 2.04.

Section 2.05. *Special Meetings.*

(a) Subject to the rights of the holders of any class or series of preferred stock of the Corporation, if any (the “Preferred Stock”), special meetings of the stockholders of the Corporation may be called by the Chairperson of the Board, the Board (acting by a majority vote of directors) or by the stockholders (individually or as a group) holding not less than twenty-five percent (25%) of the voting power of all outstanding shares of common stock of the Corporation (“Common Stock”) and the voting power of each of those certain \$50 million in aggregate initial principal amount of senior secured convertible PIK notes, issued on March 5, 2021 pursuant to the Note Purchase Agreement, dated as of March 5, 2021, among the initial holders signatory thereto, the Corporation, and Wilmington Savings Fund Society, FSB, in its capacity as collateral agent and notes agent, (the “Convertible Notes”) which shall be entitled to one vote for each share of Common Stock into which such Convertible Notes could then be converted and the holders of which shall be entitled to vote, together with holders of Common Stock, as a single class and Preferred Stock to the extent entitled to vote (the “Requisite Percentage”), subject to the following: in order for a special meeting requested by one or more stockholders (a “Stockholder Requested Special Meeting”) to be called, one or more written requests for a special meeting (each a “Special Meeting Request”), stating the purpose of the special meeting and the matters proposed to be acted upon thereat must be signed and dated by the Requisite Percentage of holders of Common Stock (including the Common Stock issuable upon conversion of the Convertible Notes) (or their duly authorized agents), must be delivered to the Board at the principal executive offices of the Corporation and must set forth: (a) in the case of any director nominations proposed to be presented at such Stockholder Requested Special Meeting, the information required by Section 2.11; (b) in the case of any matter (other than a director nomination) proposed to be conducted at such Stockholder Requested Special Meeting, the information required by Section 2.12; and (c) an agreement by the requesting stockholder(s) to notify the Board immediately in the case of any disposition prior to the record date for the Stockholder Requested Special Meeting of shares of Common Stock or Convertible Notes owned

of record and an acknowledgement that any such disposition shall be deemed a revocation of such Special Meeting Request to the extent such disposition causes the Requisite Percentage to no longer be met.

(b) A special meeting (including any Stockholder Requested Special Meeting) shall be held at such date and time as may be fixed by the Board; *provided, however*, that a Stockholder Requested Special Meeting shall be called for a date not less than twenty (20) nor more than sixty (60) calendar days after the Corporation receives a Special Meeting Request from the Requisite Percentage as provided in Section 2.05(a).

*Section 2.06. Notice of Meetings and Adjourned Meetings; Waivers of Notice.*

(a) 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 (if any), date and hour of the meeting, the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by the DGCL, such notice shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder of record entitled to vote at such meeting. Unless these Second Amended and Restated By-Laws ("By-Laws") otherwise require, when a meeting is adjourned to another time or place (whether or not a quorum is present), notice need not be given of the adjourned meeting if the time, place (if any), and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting in accordance with this Section 2.06(a).

(b) A written waiver of any such notice signed by the person entitled thereto, whether before or after the time of the meeting stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when 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. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

*Section 2.07. Quorum.* Unless otherwise provided under the Certificate or these By-Laws and subject to the DGCL, the presence, in person or by proxy, of the holders of a majority of the voting power of the outstanding shares of Common Stock and Preferred Stock (to the extent entitled to vote) generally entitled to vote at a meeting of stockholders shall constitute a quorum for the transaction of business. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairperson of the meeting or a majority in voting interest of the stockholders present in person or represented by proxy shall adjourn the meeting, without notice other than by an announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.08. *Voting.*

(a) Subject to the rights of the holders of Preferred Stock, if any, and unless otherwise provided by the DGCL, the Certificate, these By-Laws or that certain Amended and Restated Stockholders' Agreement, dated as of the Effective Date, by and among the Corporation and the stockholders of the Corporation party thereto (as it may be amended, modified or supplemented from time to time in accordance with the terms thereof, the "Stockholders' Agreement"), (i) the holder of each share of Common Stock shall be entitled to one vote per share and (ii) the holder of Convertible Notes shall be entitled to one vote for each share of Common Stock into which such Convertible Notes could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the holders of Common Stock on all matters on which stockholders generally are entitled to vote in person or by proxy. The holders of the Convertible Notes shall be entitled to vote, together with the holders of Common Stock as a single class, with respect to all matters submitted to a vote of stockholders of the Corporation generally. The affirmative vote of a majority of total voting power of the outstanding shares of Common Stock (including the Common Stock issued upon conversion of the Convertible Notes) entitled to vote on the subject matter shall be the act of the stockholders.

(b) Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to a corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, appointed by an instrument in writing, subscribed by such stockholder or by his attorney thereunto authorized, or by proxy sent by cable, telegram or by any means of electronic communication permitted by the DGCL, which results in a writing from such stockholder or by his attorney, and delivered to the secretary of the meeting.

(c) Votes may be cast by any stockholder entitled to vote in person or by his proxy. In determining the number of votes cast for or against a proposal or nominee, shares abstaining from voting on a matter (including elections) will not be treated as a vote cast. A non-vote by a broker will be counted for purposes of determining a quorum but not for purposes of determining the number of votes cast.

Section 2.09. *Organization.* At each meeting of stockholders, the Chairperson of the Board, if one shall have been elected, or in the absence of the Chairperson or if one shall not have been elected, the director designated by the vote of the majority of the directors present at such meeting, shall act as chairperson of the meeting. The person whom the chairperson of the meeting shall appoint as secretary of the meeting shall act as secretary of the meeting and keep the minutes thereof.

Section 2.10. *Order of Business.* The order of business at all meetings of stockholders shall be as determined by the chairperson of the meeting.

Section 2.11. *Nomination of Directors.* Only persons who are nominated in accordance with the procedures set forth in these By-Laws shall be eligible to serve as directors.

Subject to and as limited by the terms of the Stockholders' Agreement, nominations of persons for election to the Board may be made (a) by or at the direction of a majority of the directors or (b) by any stockholder (or affiliated group of stockholders) of the Corporation to the extent entitled to

vote, who (i) is a stockholder(s) of record at the time of giving of notice provided for in this Section 2.11, (ii) is entitled to vote for the election of directors at the meeting, and (iii) complies with the notice procedures set forth in this Section 2.11.

Such nominations made by one or more stockholders pursuant the immediately preceding paragraph shall be made pursuant to timely notice in writing to the Board. To be timely, a stockholder's notice in connection with an annual meeting of the stockholders shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the first (1<sup>st</sup>) anniversary of the preceding year's annual meeting of stockholders (or, in the case of a special meeting of stockholders, delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ten (10) days prior to the scheduled date of such special meeting); *provided, however*, that in the event that the date of the annual meeting is advanced more than sixty (60) days prior to such anniversary date, then to be timely such notice must be received by the Corporation no later than the later of seventy (70) days prior to the date of the meeting and the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of the meeting was made. Such stockholder's notice shall substantially set forth:

(a) as to each person whom the stockholder proposes to nominate for election or reelection as a director, all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors pursuant to Regulation 14A (or any successor provision) under the Securities Exchange Act of 1934, as amended, and such person's written consent to being named in any proxy statement or similar materials as a nominee and to serving as a director if elected, and

(b) as to the stockholder giving the notice and as to each person whom the stockholder proposes to nominate for election or reelection as a director (if applicable to such nominee):

(i) the name and address, as they appear on the Corporation's books, of such stockholder and any Stockholder Associated Person (defined below) covered by clause (ii) below; and

(ii) (A) the class and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and/or any Stockholder Associated Person with respect to the Corporation's securities, and (B) any derivative positions held or beneficially held by the stockholder and/or any Stockholder Associated Person and whether, and the extent to which, any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder and/or any Stockholder Associated Person, or any other agreement, arrangement or understanding has been made, the effect or intent of which is to increase or decrease the voting power of such stockholder and/or any Stockholder Associated Person with respect to the Corporation's securities.

Except to the extent directors are elected by written consent of stockholders in accordance with the DGCL, no person shall be eligible to serve as a director of the Corporation unless nominated in accordance with the procedures set forth in these By-Laws. The chairperson of the meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the procedures prescribed by these By-Laws and the Stockholders' Agreement, and if he or she should so determine, he or she shall so declare to the meeting and the defective nomination shall be disregarded.

“Stockholder Associated Person” of any stockholder means each director, executive, managing member or control person of such stockholder and, if notice is being given on behalf of a beneficial owner of a stockholder on whose behalf a nomination is made or other business is proposed, each director, executive, managing member or control person of such beneficial owner.

Section 2.12. *Notice of Business.* At any annual meeting of the stockholders, only such business shall be conducted as shall have been brought before the meeting (a) by or at the direction of the Board or (b) by any stockholder of the Corporation who is a stockholder of record at the time of giving of the notice provided for in this Section 2.12, who shall be entitled to vote at such meeting and who complies with the notice procedures set forth in this Section 2.12. For business to be properly brought before a stockholder meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Board. To be timely, a stockholder’s notice in connection with an annual meeting of the stockholders shall be delivered to or mailed and received at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the first (1<sup>st</sup>) anniversary of the preceding year’s annual meeting of stockholders; *provided, however*, that in the event that the date of the annual meeting is advanced more than thirty (30) days prior to such anniversary date, then to be timely such notice must be received by the Corporation no later than the later of seventy (70) days prior to the date of the meeting and the tenth (10<sup>th</sup>) day following the day on which public announcement of the date of the meeting was made. A stockholder’s notice to the Board shall set forth as to each matter the stockholder proposes to bring before the meeting:

(a) A brief description of the business desired to be brought before the meeting and the reasons for conducting such business at the meeting;

(b) The name and address, as they appear on the Corporation’s books, of the stockholder proposing such business and any Stockholder Associated Person covered by clauses (c) and (d) below;

(c) (i) the class and number of shares of the Corporation which are held of record or are beneficially owned by such stockholder and by any Stockholder Associated Person with respect to the Corporation’s securities and (ii) any derivative positions held or beneficially held by the stockholder and any Stockholder Associated Person and whether, and the extent to which, any hedging or other transaction or series of transactions has been entered into by or on behalf of such stockholder and/or any Stockholder Associated Person, or any other agreement, arrangement or understanding has been made, the effect or intent of which is to increase or decrease the voting power of such stockholder and/or any Stockholder Associated Person with respect to the Corporation’s securities; and

(d) any material interest of the stockholder and/or any Stockholder Associated Person in such business.

Notwithstanding anything in these By-Laws to the contrary, no business shall be conducted at a stockholder meeting except in accordance with the procedures set forth in this Section 2.12. The chairperson of the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting and in accordance with the provisions of these By-Laws, and if he or she should so determine, he or she shall so declare to the meeting and

any such business not properly brought before the meeting shall not be transacted. There shall be no limit on the number of matters that can be properly brought at a meeting.

### ARTICLE 3 DIRECTORS

Section 3.01. *General Powers.* Except as otherwise provided in the DGCL, the Certificate and the Stockholders' Agreement, the business and affairs of the Corporation shall be managed by or under the direction of the Board.

Section 3.02. *Number.* The number of seats on the Board shall initially be five (5) and, may be increased or decreased from time to time by resolution of the Board.

Section 3.03. *No Classified Board; Term.* There shall be only one class of directors. Each director shall serve from one annual meeting of stockholders until the next or until his or her earlier death, resignation or removal, subject to the terms of the Stockholders' Agreement.

Section 3.04. *Election of Directors.* Directors shall be elected by a plurality vote of the then-outstanding shares of the Corporation's Common Stock and Convertible notes entitled to vote generally in the election of directors voting together as a single class. Cumulative voting shall not be permitted.

Section 3.05. *Quorum and Manner of Acting.* Unless the Certificate or these By-Laws requires a greater or different number: (a) a majority of the directors of the Board shall constitute a quorum for the transaction of business; and (b) the affirmative vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board. If a quorum cannot be met, then the meeting may be adjourned and rescheduled for a later date. At the adjourned meeting, the Board may transact any business which might have been transacted at the original meeting.

Section 3.06. *Vacancies on the Board.* Vacancies of a director seat, including vacancies arising from an increase in the size of the Board, will be filled by an affirmative vote of the stockholders owning a majority of the outstanding shares of Common Stock (including the Common Stock issued upon conversion of the Convertible Notes) or by an affirmative vote of the majority of the remaining directors. If there are an even number of directors due to a vacancy on the Board and the stockholders or Board's vote on appointing a director to fill such vacancy results in a tie, the Chairperson of the Board will have a tiebreak vote on the appointment of the new director.

Section 3.07. *Removal of Directors.* Subject to the Certificate and applicable law, a director may be removed, with or without cause, by a majority of the then-outstanding shares of the Corporation's Common Stock (including the Common Stock issuable upon conversion of the Convertible Notes).

Section 3.08. *Time and Place of Meetings.* The Board shall hold its meetings at such place, either within or without the State of Delaware, and at such time as may be determined from time to time by the Board (or the Chairperson, if any, in the absence of a determination by the Board). Unless otherwise restricted by the DGCL, the Certificate or these By-Laws, members of the Board

or any committee thereof may participate in a meeting of the Board or any committee thereof by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other. Such participation in a meeting shall constitute presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting was not lawfully called or convened.

Section 3.09. *Quarterly Meetings.* The Board shall meet for the purpose of organization, the election of officers and the transaction of other business as soon as practicable after each annual meeting of stockholders, on the same day and at the same place where such annual meeting shall be held. Notice of such meeting need not be given. In the event such annual meeting is not so held, the annual meeting of the Board may be held at such place either within or without the State of Delaware, on such date and at such time as shall be specified in a notice thereof given as hereinafter provided in Section 3.11 herein or in a waiver of notice pursuant to Section 2.06(b). In addition, the Board shall meet at least once in each quarter of each fiscal year of the Company (other than the quarter in which the annual meeting is held) for regular meetings to transact business, with each such meeting occurring on a regularly scheduled day and at a regularly scheduled place.

Section 3.10. *Regular Meetings.* After the place and time of regular meetings of the Board shall have been determined and at least five (5) days' notice thereof shall have been once given to each member of the Board, regular meetings may be held without further notice being given.

Section 3.11. *Special Meetings.* Special meetings of the Board may be called by the Chairperson of the Board, if any, or such other officer as may be delegated by the Board and shall be called by the Chairperson of the Board, if any, or such other officer on the written request of two (2) directors. Notice of special meetings of the Board shall be given to each director at least forty-eight (48) hours before the date of the meeting in such manner as is determined by the Board; *provided*, that if any such meeting is delayed due to a failure to constitute a quorum of the Board in accordance with Section 3.05, notice of any subsequent meeting of the Board shall be given to each director at least twenty-four (24) hours before the time of such meeting.

Section 3.12. *Committees.* Promptly following the Effective Date, the Board may designate one or more committees. Each committee shall consist of one (1) or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee shall act in any manner or capacity only to the extent authorized by the Board. Each committee shall keep regular minutes of its meetings and report the same to the Board when required.

Section 3.13. *Action by Consent.* Unless otherwise restricted by the Certificate, these By-Laws or the Stockholders' Agreement, any action required or permitted to be taken at any meeting of the Board or any committee thereof may be taken without a meeting, if all members of the Board or committee consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board,



or the committee thereof, in the same paper or electronic form as the minutes are maintained.

Section 3.14. *Resignation.* Any director may resign at any time by giving notice in writing or by electronic transmission to the Board. The resignation of any director shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice or determined upon the happening of any event; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 3.15. *Compensation.* Unless otherwise restricted by the Certificate, these By-Laws or the Stockholders' Agreement, the Board shall have authority to fix the compensation of directors, including fees and reimbursement of expenses.

Section 3.16. *Chairperson.* The Board shall, from time to time, elect a Chairperson, who shall be a director on the Board; *provided*, that the Chairperson may not be the Chief Executive Officer or any other individual who is then an officer or employee of the Corporation.

#### ARTICLE 4 OFFICERS

Section 4.01. *Principal Officers.* The principal officers of the Corporation may consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Treasurer and a Secretary or such other titles determined by the Board. The Secretary shall have the duty, among other things, to record the proceedings of the meetings of stockholders and the Board in a book kept for that purpose. The Corporation may also have such other principal officers, including one or more Controllers, as the Board may in its discretion appoint. One person may hold the offices and perform the duties of any two or more of said offices, except that no one person shall hold the offices and perform the duties of President and Secretary.

Section 4.02. *Election, Term of Office and Remuneration.* The principal officers of the Corporation shall be appointed by the Board in the manner determined by the Board. Each such officer shall hold office until his or her successor is appointed and qualified, or until his or her earlier death, resignation or removal. The remuneration of all officers of the Corporation shall be fixed by the Board. Any vacancy in any office shall be filled in such manner as the Board shall determine.

Section 4.03. *Removal.* Except as otherwise permitted with respect to subordinate officers, any officer may be removed, with or without cause, at any time, by resolution adopted by the Board.

Section 4.04. *Resignations.* Any officer may resign at any time by giving written notice to the Board (or to a principal officer if the Board has delegated to such principal officer the power to appoint and to remove such officer). The resignation of any officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4.05. *Powers and Duties.* The officers of the Corporation shall have such powers and perform such duties incident to each of their respective offices and such other duties as may from time to time be conferred upon or assigned to them by the Board.

ARTICLE 5  
GENERAL PROVISIONS

Section 5.01. *Fixing the 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 may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days prior to the date of such meeting. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day preceding the day on which notice is given or, if notice is waived, at the close of business on the day preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; *provided, however*, that the Board may fix a new record date for the adjourned meeting and, in such case, shall fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) Unless otherwise restricted by the Certificate, in order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date for determining stockholders entitled to consent to corporate action in writing without a meeting has been fixed by the Board and no prior action by the Board is otherwise required by law, the record date for such purpose 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 accordance with Section 2.04. If no record date for determining stockholders entitled to consent to corporate action in writing without a meeting has been fixed by the Board and prior action by the Board 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 adopts the resolution 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 may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall be not more than sixty (60) 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 adopts the resolution relating thereto.

Section 5.02. *Dividends.* Subject to the limitations and provisions contained in the DGCL, the Certificate and the Stockholders' Agreement, the Board may declare and pay dividends upon the shares of capital stock of the Corporation, which dividends may be paid either in cash, in property or in shares of the capital stock of the Corporation.

Section 5.03. *Fiscal Year.* The fiscal year of the Corporation shall commence on January 1 and end on the Saturday closest to January 31 of each year.

Section 5.04. *Corporate Seal.* The Corporation may adopt a corporate seal, which shall be in such form as may be approved from time to time by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed in any matter reproduced.

Section 5.05. *Voting of Securities Owned by the Corporation.* The Board may authorize any person, on behalf of the Corporation, to attend, vote at and grant proxies to be used at any meeting of stockholders of any corporation or other entity (except this Corporation) in which the Corporation may hold stock or other securities or interests.

Section 5.06. *Amendments.* Subject to the terms of the Certificate and the Stockholders' Agreement, in furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, either the Board or stockholders representing a majority of the outstanding shares of Common Stock are expressly authorized to adopt, amend or repeal these By-Laws.

Section 5.07. *Share Certificates.*

(a) The shares of the Corporation shall be uncertificated shares; *provided*, that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be represented by certificates. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two duly elected officers of the Corporation, certifying the number of shares represented by such certificate. The signatures of the officers of the Corporation may be facsimiles. In case any officer who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to hold such office before such certificate is issued, it may be issued by the Corporation with the same effect as if such person held such office on the date of issue.

(b) The Board may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new certificate or certificates, the Board may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it 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. The Board may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 5.08. *Transfer Of Shares; Restrictions On Transfer.* Subject to the Certificate and the terms of the Stockholders' Agreement, shares of the capital stock of the Corporation may be transferred by the holder thereof or by such holder's duly authorized attorney upon (a) surrender of a certificate therefor properly endorsed or (b) receipt of proper transfer instructions from the

registered holder of uncertificated shares or by such holder's duly authorized attorney and upon compliance with appropriate procedures for transferring shares in uncertificated form, unless waived by the Corporation. Any attempt to transfer any shares of capital stock not in compliance with these By-Laws, the Certificate or the Stockholders' Agreement shall be null and void ab initio, and the Corporation shall not give any effect in the Corporation's stock records to such attempted transfer.

Section 5.09. *Construction; Definitions.* Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these By-Laws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular and the term "person" includes both a corporation and a natural person.