



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

January 31, 2022

Laura Turano
Paul, Weiss, Rifkind, Wharton & Garrison LLP

Re: Teladoc Health, Inc. (the "Company")
Incoming letter dated January 28, 2022

Dear Ms. Turano:

This letter is in regard to your correspondence concerning the shareholder proposal (the "Proposal") submitted to the Company by James McRitchie (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its January 21, 2022 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <https://www.sec.gov/corpfin/2021-2022-shareholder-proposals-no-action>.

Sincerely,

Rule 14a-8 Review Team

cc: John Chevedden

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*NOT ADMITTED TO THE NEW YORK BAR

WRITER'S DIRECT DIAL NUMBER

212-373-3659

WRITER'S DIRECT FACSIMILE

212-492-0659

WRITER'S DIRECT E-MAIL ADDRESS

lturano@paulweiss.com

January 21, 2022

VIA EMAIL (shareholderproposals@sec.gov)

Office of Chief Counsel

Division of Corporation Finance

U.S. Securities and Exchange Commission

100 F Street, N.E.

Washington, D.C. 20549

Re: Teladoc Health, Inc. Stockholder Proposal of James McRitchie

Ladies and Gentlemen:

We are writing on behalf of our client, Teladoc Health, Inc., a Delaware corporation (“Teladoc” or the “Corporation”), pursuant to Rule 14a-8(j) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), to notify the staff of the Division of Corporation Finance (the “Staff”) of the Securities and Exchange Commission (the “Commission”) of the Corporation’s intention to exclude from the proxy materials to be distributed by the Corporation in connection with its 2022 annual meeting of stockholders (the “Proxy Materials”), the stockholder proposal (the “Proposal”) and supporting statement (the “Supporting Statement”) submitted by Mr. James McRitchie (the “Proponent”), by a letter dated November 30, 2021.

In accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”), we are emailing this letter and its attachments to the Staff at shareholderproposals@sec.gov. In accordance with Rule 14a-8(j), we are simultaneously

sending a copy of this letter and its attachments to the Proponent and his designated agent, John Chevedden (the “Agent”) as notice of the Corporation’s intent to exclude the Proposal from the Proxy Materials. The Corporation expects to file its definitive Proxy Statement with the Commission on or about April 12, 2022, and this letter is being filed with the Commission no later than 80 calendar days before that date in accordance with Rule 14a-8(j).

Rule 14a-8(k) of the Exchange Act and Section E of SLB 14D provide that a stockholder proponent is required to send companies a copy of any correspondence that the stockholder proponent elects to submit to the Commission or the Staff. Accordingly, we are taking this opportunity to remind the Proponent and his Agent that if the Proponent or his Agent submits correspondence to the Commission or the Staff with respect to the Proposal, a copy of that correspondence should concurrently be furnished to the undersigned on behalf of the Corporation.

I. The Proposal

The Proposal, the Supporting Statement and relevant correspondence exchanged with the Proponent and his Agent are attached hereto as Exhibit A. The Proposal states:

RESOLVED: Shareholders of Teladoc Health, Inc. (“Corporation”) hereby request the Board of Directors take the steps necessary to amend our bylaws and each appropriate governing document to give holders with an aggregate of 15% net long of our outstanding common stock the power to call a special meeting.

II. Basis for Exclusion

In accordance with Rule 14a-8 of the Exchange Act, we hereby respectfully request that the Staff concur in our view that the Proposal and the Supporting Statement may properly be excluded from the Proxy Materials pursuant to Rule 14a-8(i)(10) of the Exchange Act because the Corporation has already substantially implemented the Proposal.

III. Background

Currently, under Article Tenth of the Corporation’s Sixth Amended and Restated Certificate of Incorporation (as amended, the “Certificate of Incorporation”), special meetings of stockholders may only be called by the Corporation’s Board of Directors (the “Board”), the chairperson of the Board (the “Chairperson”), the chief executive officer or the president (in the absence of a chief executive officer) and not by any other person. As such, stockholders are currently prohibited from calling special meetings under the Corporation’s Certificate of Incorporation.

Starting shortly after the receipt of the Proposal on November 30, 2021, the Corporation and the Board began to evaluate the Proposal and the Supporting Statement. Pursuant to such evaluation, including consideration of the benefits and downsides to the Corporation and its stockholders of adopting the special meeting right requested by the Proposal and in keeping with

its desire to implement good governance practices, the Board, by unanimous written consent dated January 13, 2022, (i) approved amendments to the Certification of Incorporation to allow one or more stockholders holding at least 15% net long of the Corporation's common stock to call a special meeting of stockholders subject to approval of the Corporation's stockholders at the 2022 Annual Meeting of Stockholders (the "Special Meeting Amendment"), (ii) directed that the Special Meeting Amendment be submitted to the Corporation's stockholders for adoption at the 2022 Annual Meeting of Stockholders and recommended that the stockholders vote in favor of the adoption of the Special Meeting Amendment (the "Corporation Proposal") and (iii) subject to and conditioned upon the adoption of the Special Meeting Amendment at the 2022 Annual Meeting of Stockholders, approved amendments to the Corporation's Fifth Amended and Restated Bylaws (the "Bylaws") to provide for additional procedures governing the stockholders' calling of special meetings. A copy of the executed unanimous written consent of the Board, including the Special Meeting Amendment and the amendment to the Bylaws approved by the Board, are attached hereto as Exhibit B (the "Written Consent"). For the Staff's ease of reference we have highlighted in the proposed Seventh Amended and Restated Certificate of Incorporation attached to the Written Consent the language that implements the Special Meeting Amendment.

Because the Board lacks unilateral authority to amend the Certificate of Incorporation under the Delaware General Corporation Law (the "DGCL"), approval of the Special Meeting Amendment and the submission of the Corporation Proposal for a vote by the stockholders will fully implement the Proposal to the greatest extent allowed by applicable law. We thereby submit that the Proposal has been substantially implemented under Rule 14a-8(i)(10) and is therefore excludable thereunder.

IV. Analysis

Rule 14a-8(i)(10) permits a company to exclude a stockholder proposal if the company has already substantially implemented the proposal. The Commission adopted the "substantially implemented" standard in 1983 after determining that the "previous formalistic application" of the rule defeated its purpose, which is to "avoid the possibility of stockholders having to consider matters which already have been favorably acted upon by the management." *See* Exchange Act Release No. 34-20091 (Aug. 16, 1983) [48 FR 38218] (the "1983 Release"); Exchange Act Release No. 34-12598 (July 7, 1976) [41 FR 29982]. Accordingly, the actions requested by a proposal need not be "fully effected" provided that they have been "substantially implemented" by the company. *See* 1983 Release.

Applying this standard, the Staff has consistently permitted exclusion of a proposal under Rule 14a-8(i)(10) when it has determined that the company's policies, practices, procedures and/or public disclosures compare favorably with the guidelines of the proposal. *See, e.g., JPMorgan Chase & Co.* (Mar. 9, 2021); *AbbVie Inc.* (Mar. 2, 2021); *Devon Energy Corp.* (Apr. 1, 2020); *Amazon.com, Inc. (Sisters of the Order of St. Dominic of Grand Rapids et al.)* (Mar. 27, 2020); *Pfizer Inc.* (Jan. 31, 2020); *The Allstate Corp.* (Mar. 15, 2019); *Dunkin' Brands Group, Inc.* (Mar. 6, 2019), *Johnson & Johnson* (Feb. 6, 2019). In other words, substantial

implementation under Rule 14a-8(i)(10) requires a company's actions to have satisfactorily addressed both the proposal's underlying concerns and its essential objective.

The text of the Proposal makes clear that the Proposal's essential objective is to "give holders of an aggregate of 15% net long of the Corporation's outstanding common stock the power to call a special meeting". As described above, the Board's formal approval of the Special Meeting Amendment and of the submission of the Corporation Proposal in the Corporation's Proxy Materials, along with its recommendation that stockholders approve the Special Meeting Amendment, directly addresses the requests contained in the Proposal and satisfies the Proposal's essential objective. In particular, the Special Meeting Amendment would amend the Certificate of Incorporation by deleting the prohibition against special meetings being called by persons other than the Board, the Chairperson, the CEO or the President (in the absence of the CEO), and adding a provision to allow the calling of special meetings by the secretary of the Corporation upon the written request of "one or more holders of shares of at least fifteen percent (15%) Net Long Ownership (as defined in the Bylaws of the Corporation) in voting power of the capital stock of the Corporation issued and outstanding and who have complied with the procedures and other requirements for calling a special meeting of stockholders set forth in the Bylaws of the Corporation."

When a company has already acted favorably on an issue addressed in a stockholder proposal, Rule 14a-8(i)(10) does not require the company and its stockholders to reconsider the issue. In addition, the Staff previously has concurred that stockholder proposals could be omitted from a proxy statement as substantially implemented under Rule 14a-8(i)(10) when the board represented that it took formal action to implement the essential objective of the proposal to the extent permitted by law. Directly related to the facts at hand, the Staff has consistently concurred that board action to approve a charter amendment to permit stockholders owning a threshold aggregate ownership level for calling a special stockholders' meeting, which threshold matched that requested in a stockholder proposal (in our case an aggregate of 15% net long ownership of outstanding common stock) substantially implements such stockholder proposal, even in circumstances where the Board approved certain additional procedural requirements to govern stockholder use of such a special meeting right. *See, e.g., ServiceNow, Inc.* (recon. Apr. 23, 2021) (concurring with the exclusion of a stockholder proposal asking the board to amend the bylaws and other appropriate governing documents of the company to give holders with an aggregate of 15% net long of its outstanding common stock to call a special meeting, when the board represented that it formally approved amendments to the charter and bylaws stockholders holding at least 15% net long of the company's common, subject to certain procedural provisions, and submission of such amendments for a stockholder vote at the company's upcoming annual meeting); *The Western Union Company* (March 1, 2018) (concurring with the exclusion of a stockholder proposal asking the board to amend the bylaws and other appropriate governing documents to give holders of 10% of its outstanding common stock the power to call a special meeting, when the board represented that it approved an amendment to reduce the threshold for calling a special meeting to 10%, subject to certain procedural provisions, and submission of such amendments for a stockholder vote at the company's upcoming annual meeting); *Pfizer, Inc.* (Jan 16, 2018) (concurring with the exclusion of a stockholder proposal to

amend the bylaws and any other appropriate governing documents to give stockholders with an aggregate of 10% of the company's outstanding common stock the power to call a special meeting, when the board amended the bylaws to reduce the threshold to 10%, subject to certain procedural provisions); *Windstream Holdings, Inc.* (Mar. 5, 2015) (concurring with the exclusion of a stockholder proposal to amend the bylaws and any other appropriate governing documents to give stockholders with an aggregate of 20% of the company's outstanding stock the power to call a special meeting, when the board represented that it had approved the inclusion of amendments to the charter and bylaws giving stockholders with an aggregate of 20% of the company's outstanding stock the power to call a special meeting, subject to certain procedural provisions); *Citigroup Inc.* (Feb. 12, 2008) (concurring with exclusion of stockholder proposal asking the board to amend the bylaws and any other appropriate governing documents to give holders of 10% to 25% of its outstanding common stock the power to call a special stockholder meeting, when the board represented that it had approved an amendment to the company's bylaws granting stockholders owning at least 25% of the company's outstanding common stock the right to call a special meeting, subject to certain procedural provisions).

By formally approving the Special Meeting Amendment and the submission of the Corporation Proposal for approval by the Corporation's stockholders, the Board will have taken all steps permitted by applicable law to substantially implement the Proposal and no further action on its part is needed to substantially implement the Proposal. If approved by the stockholders, the Special Meeting Amendment would become effective upon filing an amendment to the Certificate of Incorporation with the Secretary of State of the State of Delaware, which the Corporation would file promptly following the 2022 Annual Meeting of Stockholders. If the stockholders approve the amendments to the Certificate of Incorporation, the amendment to the Bylaws would become effective immediately upon the effectiveness of the amendments to the Certificate of Incorporation. Thus, the Proposal has been substantially implemented for purposes of Rule 14a-8(i)(10), and the Proposal may be excluded from the Corporation's Proxy Materials under Rule 14a-8(i)(10).

V. Conclusion

By copy of this letter, the Proponent and his Agent are being notified that for the reasons set forth herein, the Corporation intends to exclude the Proposal and Supporting Statement from its Proxy Materials. We respectfully request that the Staff concur with our view and not recommend enforcement action if the Corporation excludes the Proposal and Supporting Statement from its Proxy Materials. If we can be of assistance in this matter, please do not hesitate to contact me at lturano@paulweiss.com or (212) 373-3659.

Sincerely,



Laura Turano, Esq.

cc (by email and/or overnight mail): James McRitchie (c/o John Chevedden), Jonathan Dorfman

Attachments

EXHIBIT A

Proponent's Proposal and Supporting Statement

(See attached)

Corporate Governance

CorpGov.net: improving accountability through democratic corporate governance since 1995

[REDACTED]

Teledoc Health, Inc
Attention: Adam C. Vandervoort Chief Legal Officer and Secretary
2 Manhattanville Road, Suite 203
Purchase, New York 10577
Via: Adam Vandervoort <avandervoort@teladochealth.com>
cc: Samantha Macina <smacina@teladochealth.com>
Jonathan Dorfman <jonathan.dorfman@teladochealth.com>

Dear Mr. Vandervoort or current Corporate Secretary:

I am submitting the attached shareholder proposal, which I support, for a vote at the next annual shareholder meeting requesting the right of Shareholders to Call Special Meetings. I pledge to continue to hold the required amount of stock until after the date of that meeting.

My submitted format, with the shareholder-supplied emphasis, is intended to be used for definitive proxy publication. I am available to meet with the Company's representative via phone on December 13, at 10am or 10:30 Pacific or at a time that is mutually convenient.

This letter confirms that I am delegating John Chevedden to act as my agent regarding this Rule 14a-8 proposal, including presentation at the forthcoming shareholder meeting but not with regard to submission, negotiations or modification, which will require my approval. Please direct future communications regarding my rule 14a-8 proposal to John Chevedden ([REDACTED] [REDACTED]) at: [REDACTED] to facilitate prompt communication.

You can avoid the time and expense of filing a deficiency letter to verify ownership by simply acknowledging receipt of my proposal promptly by email to [REDACTED]. That will prompt me to request the required letter from my broker and to submit it to you. Per the most recent SEC SLB 14L <https://www.sec.gov/corpfin/staff-legal-bulletin-14l-shareholder-proposals>, Section F, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

Sincerely,


James McRitchie

November 30, 2021

Date

[TDOC: Rule 14a-8 Proposal, November 30, 2021]
[This line and any line above it – *Not* for publication.]



ITEM 4* – Right of Shareholder’s to Call Special Meetings

RESOLVED: Shareholders of Teladoc Health (“Company”) hereby request the Board of Directors take the steps necessary to amend our bylaws and each appropriate governing document to give holders with an aggregate of 15% net long of our outstanding common stock the power to call a special shareholder meeting. This proposal does not impact our Board’s current power to call a special meeting.

SUPPORTING STATEMENT: Our Company allows a majority of the Board to call a special meeting, whereas Delaware law provisions also permit companies to allow shareholders holding 10% of outstanding shares to call such meetings. A meaningful shareholder right to call a special meeting is a way to bring an important matter to the attention of both management and shareholders outside the annual meeting cycle. This is important because there could be 15-months between annual meetings.

Currently, over 70% of S&P 500 companies allow shareholders to call a special meeting. Over half of Russell 3000 companies also allow shareholders this right.

According to Proxy Insight’s “Resolution Tracker,” between August 2019 and May 2021 the topic of providing shareholders a right to call a special meeting won 57.5% at Electronic Arts, 70.2% at Sonoco Products, 52.3% at Verizon Communications, 97.3% at SPAR Group, 78.9% at FleetCor Technologies, 63.2% at Kellogg Company, 56.1% at Thermo Fisher Scientific, and 53.2% at Dollar General.

Large funds such as Vanguard, TIAA-CREF, BlackRock and SSgA Funds Management, Inc. (State Street) support the right of shareholders to call special meetings. For example, BlackRock includes the following in its proxy voting guidelines: “[S]hareholders should have the right to call a special meeting...”

This proposal should be seen in the context that shareholders at our Company have no right to act by written consent.

We urge the Board to join the mainstream of major U.S. companies and establish a right for shareholders owning 15% of our outstanding common stock to call a special meeting.

Increase Long-Term Shareholder Value
Vote FOR the Right of Shareholders to Call Special Meetings – Proposal [4*]

[This line and any below, *except for footnotes*, are *not* for publication.]
Number 4* to be assigned by TDOC

The graphic included above is intended to be published with the rule 14a-8 proposal and would be the same size as the largest management graphic (or highlighted management text) used in conjunction with a management proposal or opposition to a Rule 14a-8 shareholder proposal in the 2022 proxy.

The proponent is willing to discuss mutual elimination of both shareholder graphic and any management graphic in the proxy in regard to this specific proposal. Reference SEC Staff Legal Bulletin No. 14I (CF) [16].

Companies should not minimize or otherwise diminish the appearance of a shareholder's graphic. For example, if the company includes its own graphics in its proxy statement, it should give similar prominence to a shareholder's graphics. If a company's proxy statement appears in black and white, however, the shareholder proposal and accompanying graphics may also appear in black and white.

Notes: This proposal is believed to conform with Staff Legal Bulletin No. 14B (CF), September 15, 2004 including (emphasis added):

Accordingly, going forward, we believe that it would not be appropriate for companies to exclude supporting statement language and/or an entire proposal in reliance on rule 14a-8(i)(3) in the following circumstances:

- the company objects to factual assertions because they are not supported;
- the company objects to factual assertions that, while not materially false or misleading, may be disputed or countered;
- the company objects to factual assertions because those assertions may be interpreted by shareholders in a manner that is unfavorable to the company, its directors, or its officers; and/or
- the company objects to statements because they represent the opinion of the shareholder proponent or a referenced source, but the statements are not identified specifically as such.

We believe that it is appropriate under rule 14a-8 for companies to address these objections in their statements of opposition.

See also Sun Microsystems, Inc. (July 21, 2005)

I also take this opportunity to remind you of the SEC's recent guidance and my request that you acknowledge receipt of this shareholder proposal submission. SLB 14L Section F, <https://www.sec.gov/corpfin/staff-legal-bulletin-14i-shareholder-proposals>, Staff "encourages both companies and shareholder proponents to acknowledge receipt of emails when requested."

From: [Jonathan Dorfman](#)
To: [James McRitchie](#)
Cc: [Adam Vandervoort](#)
Subject: RE: SEC Rule 14a-8 Shareholder Proposal (TDOC)
Attachments: [image001.png](#)

Hi Jim,

We intend to present the amendment to the certificate of incorporation to stockholders at the upcoming annual meeting (and to recommend that stockholders vote in favor of the amendment). The bylaw amendments don't require stockholder approval and we believe it would be highly unusual to submit them for stockholder approval here, so we do not intend to do so. As I mentioned, however, the bylaw amendments were already approved by our Board (subject to and conditioned upon stockholders adopting the amendment to the certificate of incorporation at the annual meeting).

Regards,
Jonathan

Jonathan Dorfman

Vice President, Securities & Corporate Law
Teladoc Health, Inc.

☎ [\(312\) 796-9607](tel:(312)796-9607)
jonathan.dorfman@teladochealth.com



From: James McRitchie [REDACTED]
Sent: Thursday, January 13, 2022 10:02 PM
To: Jonathan Dorfman <jonathan.dorfman@teladochealth.com>
Subject: Re: SEC Rule 14a-8 Shareholder Proposal (TDOC)

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Johnathan,

I agree to withdraw the proposal, contingent on and in return for the Board placing the bylaw language attached below as a proposal to

shareholders at the 2022 annual meeting with a recommendation to vote in favor of the proposal.

Please confirm that we have an agreement.

Best, - Jim

James McRitchie
Shareholder Advocate
Corporate Governance

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

On Jan 13, 2022, at 9:53 AM, Jonathan Dorfman
<jonathan.dorfman@teladochealth.com> wrote:

Hi Jim,

Attached are the relevant changes proposed to Teladoc Health's charter and bylaws. The changes were already approved by our board earlier this week and we believe these include market standard provisions. The charter will be submitted to shareholders at the upcoming annual meeting. Please let us know as soon as possible if you agree to withdraw your proposal. If not, we will request no-action relief from the SEC on the basis that the request has been substantially implemented.

Regards,
Jonathan

Jonathan Dorfman
Vice President, Securities & Corporate Law
Teladoc Health, Inc.

○ (312) 796-9607
jonathan.dorfman@teladochealth.com



From: James McRitchie [REDACTED]
Sent: Monday, January 10, 2022 8:27 PM
To: Jonathan Dorfman <jonathan.dorfman@teladochealth.com>
Cc: John Chevedden [REDACTED] Adam Vandervoort
<avandervoort@teladochealth.com>
Subject: Re: SEC Rule 14a-8 Shareholder Proposal (TDOC)

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Sounds good. Let us have a look at the language. We've seen a few problematic provisions sneaking into a very small number of these. Thanks. - Jim

On Jan 10, 2022, at 7:41 AM, Jonathan Dorfman
<jonathan.dorfman@teladochealth.com> wrote:

Mr. Chevedden,

I'm writing to let you know that Teladoc Health's management is recommending that the Board approve amendments to the company's certificate of incorporation and bylaws to adopt a special meeting right for shareholders holding 15% net long ownership. We anticipate receiving approval from the Board this week, and if approved the charter amendment would then be presented for stockholder approval at the 2022 annual meeting.

Given the foregoing, we would like to request the withdrawal of the shareholder proposal. If that is acceptable to you, please confirm by return email. Please feel free to reach out me with any questions or if you'd like to discuss.

Regards,
Jonathan

Jonathan Dorfman
Vice President, Securities & Corporate Law
Teladoc Health, Inc.

○ [\(312\) 796-9607](tel:(312)796-9607)

of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH : Special meetings of stockholders for any purpose or purposes may be called at any time only by (i) the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer), and may not be called by any other person or persons or (ii) by the secretary of the Corporation upon the written request of one or more holders of shares of at least fifteen percent (15%) Net Long Ownership (as defined in the Bylaws of the Corporation) in voting power of the capital stock of the Corporation issued and outstanding and who have complied with the procedures and other requirements for calling a special meeting of stockholders set forth in the Bylaws of the Corporation. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TENTH.

ELEVENTH : Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware or this Certificate of Incorporation or the Bylaws of the Corporation, (d) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation or (e) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein; provided that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article ELEVENTH. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article ELEVENTH. If any provision or provisions of this Article ELEVENTH shall be held to be invalid, illegal or unenforceable as applied

~~FIFTH~~SIXTH
AMENDED AND RESTATED BYLAWS
OF
TELADOC HEALTH, INC.

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of Teladoc Health, Inc. (the "Corporation") shall be fixed in the Corporation's certificate of incorporation, as the same may be amended from time to time (the "certificate of incorporation").

1.2 OTHER OFFICES.

The Corporation's board of directors (the "Board") may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 ANNUAL MEETING.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with ~~Section~~Sections 2.4 and 2.5 of these bylaws may be transacted.

2.3 SPECIAL MEETING.

(a) A special meeting of the stockholders may be called at any time only by (i) the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer), ~~but such special meetings may not be called by any other person or persons~~ or (ii) the secretary of the Corporation upon proper written request or requests (each, a "Meeting Request") given by or on behalf of one or more stockholders or beneficial owners (each, a "Requesting Stockholder") that have, in the aggregate, Net Long Ownership of at least fifteen percent (15%) in voting power of the capital stock of the

Corporation issued and outstanding (the “Required Percentage”) and who have complied with the procedures and requirements of this Section 2.3. No business may be transacted at such special meeting other than the business specified in ~~such~~the Company’s notice to stockholders. Nothing contained in this ~~paragraph of this~~ Section 2.3 shall be construed as limiting, fixing, or affecting the time when a meeting of stockholders called by action of the Board may be held.

(b) The term “Net Long Ownership”, as used herein, when used to describe the nature of a Requesting Stockholder’s ownership of capital stock of the Corporation, shall mean the capital stock of the Corporation that such stockholder or, if such person is a beneficial owner, that such beneficial owner, would then be deemed to own pursuant to the definition of “net long position” set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (as so amended and inclusive of such rules and regulations, the “Exchange Act”), excluding, at any time, (i) any capital stock as to which such stockholder or beneficial owner, as the case may be, does not then have the right to vote or direct the vote and (ii) any capital stock as to which such person or beneficial owner (or any affiliate or associate of such stockholder or beneficial owner), as the case may be, had directly or indirectly entered into (or caused to be entered into) and not yet terminated a Short Interest (as defined below). Further, for purposes of such definition, in determining each stockholder or beneficial owner’s “short position”, the reference in Rule 14e-4 to “the date the tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired” shall instead be the date for determining a stockholder or beneficial owner’s Net Long Ownership and the reference to the “highest tender offer price or stated amount of the consideration offered for the subject security” shall refer to the market price on such date.

(c) The record date for determining stockholders, or beneficial owners, as applicable, entitled to request a special meeting shall be the date on which the first Meeting Request for such special meeting was received by the secretary of the Corporation in the manner required by the preceding sentence. In determining whether a special meeting of stockholders has been requested by the Requesting Stockholders representing in the aggregate at the least the Required Percentage, multiple Meeting Requests delivered to the secretary of the Corporation will be considered together only if (i) each Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board of Directors, and (ii) such Special Meeting Requests have been dated and delivered to the secretary of the Corporation within sixty (60) days of the earliest dated Special Meeting Request.

(d) To be in proper form, a Meeting Request shall be signed by the Requesting Stockholder or Requesting Stockholders submitting such Meeting Request, delivered or mailed to, and received by the secretary of the Corporation at, the principal executive offices of the Corporation, and set forth the following:

(i) a statement of the specific purpose or purposes of the meeting and the matters proposed to be acted on at the meeting, the reasons for conducting

such business at the meeting, and any material interest in such business of each such Requesting Stockholder;

(ii) the name and address of each such Requesting Stockholder as it appears on the Corporation's stock ledger (or, with respect to all shares to be included in the Required Percentage that are beneficially owned but not of record by each such Requesting Stockholder, the name of each broker, bank or custodian (or similar entity) of each such Requesting Stockholder with respect to such shares);

(iii) documentary evidence of the Requesting Stockholders' Net Long Ownership of shares of the Corporation's Common Stock and other capital stock;

(iv) as to each such Requesting Stockholder, the information required to be disclosed pursuant to Section 2.4(c), (d) and (e) (except that references in Section 2.4(c)(i) to (iii) to (A) "Proposing Person" shall instead refer, respectively, to each "Requesting Stockholder", any of such Requesting Stockholder's affiliates or associates (each within the meaning of Rule 12b-2 under the Exchange Act for the purposes of these bylaws) and any other person with whom such Requesting Stockholder (or any of their respective affiliates or associates) is Acting in Concert (as defined below) and (B) "annual meetings" shall instead refer to the applicable "special meeting");

(v) a representation as to whether each Requesting Stockholder intends (A) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the matters proposed to be acted on at the special meeting or (B) otherwise to solicit proxies from Stockholders in support of the matters proposed to be acted on at the special meeting;

(vi) a representation that each Requesting Stockholder, or one or more representatives of each such stockholder, intends to appear in person or by proxy at the special meeting to present the matters proposed to be acted on at the special meeting;

(vii) an acknowledgment by each Requesting Stockholder that any reduction in Net Long Ownership of capital stock of the Corporation with respect to which a Meeting Request relates following the delivery of such Meeting Request to the secretary of the Corporation shall constitute a revocation of such Meeting Request to the extent of such reduction, and an agreement to notify the Corporation if there has been any such reduction.

(viii) all other information that would be required to be filed with the U.S. Securities and Exchange Commission (the "SEC") if the Requesting Stockholders were participants in a solicitation subject to Section 14 of the Exchange Act; and

(ix) a representation that each Requesting Stockholder shall provide any other information reasonably requested by the Corporation.

The requirement set forth in clause (iv) of the immediately preceding sentence shall not apply to any Stockholder that is a broker, bank or custodian (or similar entity) and is acting solely as nominee on behalf of a beneficial owner.

(e) The Requesting Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within ten (10) business days after each such request.

(f) The Requesting Stockholders shall affirm as true and correct the information provided to the Corporation in the Meeting Request or at the Corporation's request pursuant to Section 2.3(e) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is ten (10) business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the principal executive offices of the Corporation, addressed to the secretary of the Corporation, by no later than (A) five (5) business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (B) not later than seven (7) business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of ten (10) business days before the meeting or reconvening any adjournment or postponement thereof).

(g) A Requesting Stockholder may revoke its Meeting Request at any time by written revocation delivered to the secretary of the Corporation, and if, following such revocation, there are unrevoked Meeting Requests from less than the Required Percentage, the Board, in its discretion, may cancel the special meeting of the stockholders.

(h) A special meeting so requested by Stockholders shall be held at such date, time and place, if any, either within or without the state of Delaware or by means of remote communication, as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the receipt by the secretary of the Corporation in the manner required by Section 2.3(d) of Meeting Requests satisfying the Required Percentage.

(i) A special meeting requested by stockholders or beneficial owners shall not be held if (A) such stockholders, beneficial owners, or the Meeting Requests from the Required Percentage do not comply with these bylaws or the certificate of incorporation; (B) the action relates to an item of business that is not a proper subject for stockholder action under applicable law; (C) the Meeting Request is received by the secretary of the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of adjournment of the next annual meeting of stockholders; (D) an

identical or substantially similar item of business, as determined in good faith by the Board, was presented at a meeting of Stockholders held not more than sixty (60) days before the Meeting Requests satisfying the Required Percentage are received by the Secretary or (E) the Meeting Requests satisfying the Required Percentage were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(j) If none of the Requesting Stockholders appear or send a duly authorized representative to present the business to be presented for consideration specified in the Meeting Requests from the Required Percentage, the Corporation need not present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation; and

(k) Nothing herein shall prohibit the Board from including in the Corporation's notice of any special meeting of Stockholders called by the Secretary additional matters to be submitted to the Stockholders at such meeting not included in the Meeting Request(s) in respect of such meeting.

2.4 ADVANCE NOTICE PROCEDURES FOR BUSINESS BROUGHT BEFORE A MEETING.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business (other than the election of directors, the procedures for which are detailed in Section 2.5 of these bylaws for advance notice nominees and Section 2.18 of these bylaws for proxy access nominees) must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board, (ii) brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.4 as to such business. Except for (x) proposals properly made in accordance with Rule 14a-8 under the ~~Securities-Exchange Act of 1934, as amended, and the rules and regulations promulgated 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, and (y) the calling of special meetings of stockholders (which is governed by Section 2.3), the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. ~~Stockholders shall not be permitted to propose business to be brought before a special meeting of the stockholders, and the only matters that may be brought before a special meeting are the matters specified in the notice of meeting given by or at the direction of the person calling the meeting pursuant to Section 2.3 of these bylaws.~~ Stockholders seeking to nominate persons for election to the Board must comply with the procedures set forth in Section 2.5 of these bylaws for advance notice nominees or Section 2.18 of these bylaws for proxy access nominees, and this Section 2.4 shall not be applicable to

EXHIBIT B

Written Consent

(See attached)

**UNANIMOUS WRITTEN CONSENT
OF THE BOARD OF DIRECTORS
OF TELADOC HEALTH, INC.**

The undersigned, being all of the members of the Board of Directors (the “**Board**”) of Teladoc Health, Inc., a Delaware corporation (the “**Company**”), acting by written consent without a meeting pursuant to Section 3.9 of the Bylaws of the Company and Section 141(f) of the Delaware General Corporation Law, do hereby consent to the adoption of the following recitals and resolutions and direct that this consent be filed with the minutes of the proceedings of the Board:

Seventh Amended and Restated Certificate of Incorporation

WHEREAS, the Board has determined that it is in the best interests of the Company and its stockholders to amend the Sixth Amended and Restated Certificate of Incorporation of the Company, as amended (the “**Certificate of Incorporation**”), to (a) allow stockholders of the Company to call special meetings and (b) update the address of the registered agent of the Company; and

WHEREAS, the Board has determined that it is in the best interests of the Company and its stockholders to restate and integrate the Certificate of Incorporation and all subsequent amendments thereto.

NOW, THEREFORE, BE IT RESOLVED, that the Board approves and declares it advisable and in the best interests of the Company and its stockholders to amend and restate the Certificate of Incorporation in the form attached hereto as Exhibit A (the “**Seventh Amended and Restated Certificate of Incorporation**”) to (a) allow holders of shares of at least 15% net long ownership of the Company to call special meetings (the “**Special Meeting Amendment**”) and (b) update the address of the registered agent of the Company;

RESOLVED, FURTHER, that the Board directs that the Special Meeting Amendment be submitted to the stockholders of the Company and recommends that the stockholders vote in favor of the adoption of the Special Meeting Amendment;

RESOLVED, FURTHER, that subject to the prior adoption of the Special Meeting Amendment by the stockholders of the Company and the immediately following resolution, the Company, by and through any of its Designated Officers (as defined below), be, and hereby is, authorized and directed to execute and cause to be filed the Seventh Amended and Restated Certificate of Incorporation with the office of the Secretary of State of the State of Delaware (the “**Delaware SOS Office**”); and

RESOLVED, FURTHER, that, at any time prior to the effectiveness of the filing of the Seventh Amended and Restated Certificate of Incorporation with the Delaware SOS Office (the “**Effective Time**”), notwithstanding authorization of the Special Meeting Amendment by the stockholders of the Company, the Board may abandon the Seventh Amended and Restated Certificate of Incorporation without further action by stockholders of the Company, and upon

any such abandonment no Designated Officer shall be authorized to execute or file with the Delaware SOS Office the Seventh Amended and Restated Certificate of Incorporation.

Seventh Amended and Restated Bylaws

WHEREAS, the Board has determined that it is in the best interests of the Company and its stockholders to amend the Company's bylaws to allow stockholders to call special meetings, subject to and conditioned upon the adoption of the Special Meeting Amendment by the stockholders of the Company.

NOW, THEREFORE, BE IT RESOLVED, that, subject to and conditioned upon the adoption of the Special Meeting Amendment by the stockholders of the Company and the occurrence of the Effective Time, the Board hereby approves and adopts the Sixth Amended and Restated Bylaws of the Company in the form attached hereto as Exhibit B.

General Authorizations

RESOLVED, that each of the Chief Executive Officer, President and any Vice President of the Company (each a "***Designated Officer***") be, and each hereby is, authorized, empowered and directed to do and perform, or cause to be done and performed, in the name and on behalf of the Company, as the case may be, all such acts and to execute and deliver all such documents and instruments, and take such other actions as such Designated Officer taking such action or actions deems necessary, appropriate, advisable or desirable, including filing a Current Report on Form 8-K, as each such Designated Officer deems necessary or advisable to carry out the intent and purposes of the foregoing resolutions, such determination to be conclusively evidenced by the performance of such acts and delivery of such documents and instruments;

RESOLVED, FURTHER, that any modification made by a Designated Officer to any draft document presented to and approved by the Board, prior to its execution or filing, not inconsistent with the intent inherent in such approval be, and hereby is, approved and adopted by, of behalf of and in the name of the Company with the same weight and effect as if such draft presented to the Board had included such modification; and

RESOLVED, FURTHER, that any action previously taken by a Designated Officer or his or her designee in furtherance of the intent and purpose of the foregoing resolutions and all other actions incidental thereto be, and hereby are, ratified, confirmed and approved by and in the name of the Company.

RESOLVED FURTHER, that this Unanimous Written Consent may be signed in two or more counterparts, each of which shall be deemed an original, and all of which shall be deemed one instrument.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, being all of the members of the Board, do hereby execute this Unanimous Written Consent on the dates set forth opposite each such undersigned's name.

DocuSigned by:

F2766CBFBC3B40B...
Christopher Bischoff
Date: 1/10/2022

DocuSigned by:

D7517989588E49E...
Karen L. Daniel
Date: 1/13/2022

DocuSigned by:

B43E547533D7440...
Sandra L. Fenwick
Date: 1/10/2022

DocuSigned by:

B7E1BCE9127C4D6...
William H. Frist, M.D.
Date: 1/10/2022

DocuSigned by:


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Jason Gorevic
Date: 1/13/2022

DocuSigned by:

E7A9F51069EF4F5...
Catherine A. Jacobson
Date: 1/10/2022

DocuSigned by:

6ED75BC7A4C746B...
Thomas G. McKinley
Date: 1/10/2022

DocuSigned by:

B7E8961EA66248D...
Kenneth H. Paulus
Date: 1/10/2022

DocuSigned by:

E79DCFEAD7434C7...
David L. Shedlarz
Date: 1/10/2022

DocuSigned by:

FE34B2541BED496...
Mark D. Smith, M.D.
Date: 1/10/2022

DocuSigned by:

7217F48B5CAA4CD...
David B. Snow, Jr.
Date: 1/10/2022

**SEVENTH AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
TELADOC HEALTH, INC.**

Teladoc Health, Inc., a corporation organized and existing under the laws of the State of Delaware (the “Corporation”), certifies that:

1. The name of the Corporation is Teladoc Health, Inc. The Corporation’s original Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on October 16, 2008. An Amended and Restated Certificate of Incorporation of the Corporation was filed with the Delaware Secretary of State on November 19, 2009. A Second Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on August 25, 2011. A Third Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on August 29, 2013. A Fourth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on September 9, 2014. A Fifth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on July 6, 2015. A Sixth Amended and Restated Certificate of Incorporation was filed with the Delaware Secretary of State on May 25, 2017.

2. This Seventh Amended and Restated Certificate of Incorporation amends, restates and integrates the provisions of the Sixth Amended and Restated Certificate of Incorporation, as amended from time to time, and has been duly adopted in accordance with Sections 133, 242 and 245 of the General Corporation Law.

3. The Text of the Seventh Amended and Restated Certificate of Incorporation is amended and restated as set forth in Exhibit A attached hereto.

IN WITNESS WHEREOF, the Corporation has caused this Seventh Amended and Restated Certificate of Incorporation to be signed by a duly authorized officer on _____, 2022.

TELADOC HEALTH, INC.

By: /s/ Jason Gorevic
Name: Jason Gorevic
Title: President and Chief Executive Officer

EXHIBIT A

SEVENTH AMENDED AND RESTATED CERTIFICATE OF INCORPORATION
OF
TELADOC HEALTH, INC.

FIRST: The name of the Corporation is Teladoc Health, Inc. (the "Corporation").

SECOND: The address of the Corporation's registered office in the State of Delaware is 251 Little Falls Drive in the City of Wilmington, County of New Castle, Zip Code 19808. The name of its registered agent at that address is Corporation Service Company.

THIRD: The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware.

FOURTH: The total number of shares of all classes of stock which the Corporation shall have authority to issue is 301,000,000 shares, consisting of (a) 300,000,000 shares of Common Stock, \$0.001 par value per share ("Common Stock"), and (b) 1,000,000 shares of Preferred Stock, \$0.001 par value per share ("Preferred Stock").

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

A. COMMON STOCK.

1. General. The voting, dividend and liquidation rights of the holders of the Common Stock are subject to and qualified by the rights of the holders of the Preferred Stock of any series as may be designated by the Board of Directors upon any issuance of the Preferred Stock of any series.

2. Voting. The holders of the Common Stock shall have voting rights at all meetings of stockholders, each such holder being entitled to one vote for each share thereof held by such holder; provided, however, that, except as otherwise required by law, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (which, as used herein, shall mean the certificate of incorporation of the Corporation, as amended from time to time, including the terms of any certificate of designations of any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together as a class with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation or the General Corporation Law of the State of Delaware. There shall be no cumulative voting.

The number of authorized shares of Common Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

3. Dividends. Dividends may be declared and paid on the Common Stock as and when determined by the Board of Directors subject to any preferential dividend or other rights of any then outstanding Preferred Stock and to the requirements of applicable law.

4. Liquidation. Upon the dissolution or liquidation of the Corporation, whether voluntary or involuntary, holders of Common Stock will be entitled to receive all assets of the Corporation available for distribution to its stockholders, subject to any preferential or other rights of any then outstanding Preferred Stock.

B. PREFERRED STOCK.

Preferred Stock may be issued from time to time in one or more series, each of such series to have such terms as stated or expressed herein and in the resolution or resolutions providing for the issue of such series adopted by the Board of Directors of the Corporation as hereinafter provided.

Authority is hereby expressly granted to the Board of Directors from time to time to issue the Preferred Stock in one or more series, and in connection with the creation of any such series, by adopting a resolution or resolutions providing for the issuance of the shares thereof and by filing a certificate of designations relating thereto in accordance with the General Corporation Law of the State of Delaware, to determine and fix the number of shares of such series and such voting powers, full or limited, or no voting powers, and such designations, preferences and relative participating, optional or other special rights, and qualifications, limitations or restrictions thereof, including without limitation thereof, dividend rights, conversion rights, redemption privileges and liquidation preferences, as shall be stated and expressed in such resolutions, all to the fullest extent now or hereafter permitted by the General Corporation Law of the State of Delaware. Without limiting the generality of the foregoing, the resolution or resolutions providing for the issuance of any series of Preferred Stock may provide that such series shall be superior or rank equally or be junior to any other series of Preferred Stock to the extent permitted by law.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the stock of the Corporation entitled to vote, irrespective of the provisions of Section 242(b)(2) of the General Corporation Law of the State of Delaware.

FIFTH: Except as otherwise provided herein, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of

Incorporation, in the manner now or hereafter prescribed by statute and this Certificate of Incorporation, and all rights conferred upon stockholders herein are granted subject to this reservation.

SIXTH: In furtherance and not in limitation of the powers conferred upon it by the General Corporation Law of the State of Delaware, and subject to the terms of any series of Preferred Stock, the Board of Directors shall have the power to adopt, amend, alter or repeal the Bylaws of the Corporation. The stockholders may not adopt, amend, alter or repeal the Bylaws of the Corporation, or adopt any provision inconsistent therewith, unless such action is approved, in addition to any other vote required by this Certificate of Incorporation, by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article SIXTH.

SEVENTH: Except to the extent that the General Corporation Law of the State of Delaware prohibits the elimination or limitation of liability of directors for breaches of fiduciary duty, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, notwithstanding any provision of law imposing such liability. No amendment to or repeal of this provision shall apply to or have any effect on the liability or alleged liability of any director of the Corporation for or with respect to any acts or omissions of such director occurring prior to such amendment or repeal. If the General Corporation Law of the State of Delaware is amended to permit further elimination or limitation of the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the General Corporation Law of the State of Delaware as so amended.

EIGHTH: This Article EIGHTH is inserted for the management of the business and for the conduct of the affairs of the Corporation.

1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.
2. Number of Directors; Election of Directors. Subject to the rights of holders of any series of Preferred Stock to elect directors, the number of directors of the Corporation shall be established from time to time by the Board of Directors. Election of directors need not be by written ballot, except as and to the extent provided in the Bylaws of the Corporation.
3. Terms of Office. Subject to the rights of holders of any series of Preferred Stock to elect directors, each director whether elected at an annual meeting of stockholders or elected in the interim to fill vacancies and newly created directorships,

shall hold office until the next annual meeting of stockholders; provided that the term of each director shall continue until the election and qualification of his or her successor and be subject to his or her earlier death, resignation or removal.

4. Quorum. The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors fixed pursuant to Section 2 of this Article EIGHTH shall constitute a quorum of the Board of Directors. If at any meeting of the Board of Directors there shall be less than such a quorum, a majority of the directors present may adjourn the meeting from time to time without further notice other than announcement at the meeting, until a quorum shall be present.

5. Action at Meeting. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the Board of Directors unless a greater number is required by law or by this Certificate of Incorporation.

6. Removal. Subject to the rights of holders of any series of Preferred Stock, directors of the Corporation may be removed only by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

7. Vacancies. Subject to the rights of holders of any series of Preferred Stock, any vacancy or newly created directorship in the Board of Directors, however occurring, shall be filled only by vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director and shall not be filled by the stockholders, unless the Board of Directors determines by resolution that any such vacancy or newly created directorship shall be filled by the stockholders.

8. Stockholder Nominations and Introduction of Business, Etc. Advance notice of stockholder nominations for election of directors and other business to be brought by stockholders before a meeting of stockholders shall be given in the manner provided by the Bylaws of the Corporation.

9. Amendments to Article. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article EIGHTH.

NINTH: Stockholders of the Corporation may not take any action by written consent in lieu of a meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article NINTH.

TENTH: Special meetings of stockholders for any purpose or purposes may be called at any time only by (i) the Board of Directors, the chairperson of the Board of Directors, the chief executive officer or the president (in the absence of a chief executive officer), or (ii) by the secretary of the Corporation upon the written request of one or more holders of shares of at least fifteen percent (15%) Net Long Ownership (as defined in the Bylaws of the Corporation) in voting power of the capital stock of the Corporation issued and outstanding and who have complied with the procedures and other requirements for calling a special meeting of stockholders set forth in the Bylaws of the Corporation. Business transacted at any special meeting of stockholders shall be limited to the purpose or purposes stated in the notice of meeting. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article TENTH.

ELEVENTH: Unless the Corporation consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware shall, to the fullest extent permitted by law, be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of fiduciary duty owed by, or other wrongdoing by, any director, officer, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, creditors or other constituents, (c) any action asserting a claim arising pursuant to any provision of the General Corporation Law of the State of Delaware or this Certificate of Incorporation or the Bylaws of the Corporation, (d) any action to interpret, apply, enforce or determine the validity of this Certificate of Incorporation or the Bylaws of the Corporation or (e) any action asserting a claim governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein; provided that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. To the fullest extent permitted by applicable law, any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article ELEVENTH. Notwithstanding any other provisions of law, this Certificate of Incorporation or the Bylaws of the Corporation, and notwithstanding the fact that a lesser percentage may be specified by law, the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon shall be required to amend or repeal, or to adopt any provision inconsistent with, this Article ELEVENTH. If any provision or provisions of this Article ELEVENTH shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Article ELEVENTH (including, without limitation, each portion of any sentence of this Article ELEVENTH containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be

invalid, illegal or unenforceable) and the application of such provision to other persons or entities and circumstances shall not in any way be affected or impaired thereby.

**SIXTH AMENDED AND RESTATED
BYLAWS
OF
TELADOC HEALTH, INC.
(a Delaware corporation)**

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**SIXTH
AMENDED AND RESTATED BYLAWS
OF
TELADOC HEALTH, INC.**

ARTICLE I

CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of Teladoc Health, Inc. (the "Corporation") shall be fixed in the Corporation's certificate of incorporation, as the same may be amended from time to time (the "certificate of incorporation").

1.2 OTHER OFFICES.

The Corporation's board of directors (the "Board") may at any time establish other offices at any place or places where the Corporation is qualified to do business.

ARTICLE II

MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

Meetings of stockholders shall be held at any place, within or outside the State of Delaware, designated by the Board. The Board may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (the "DGCL"). In the absence of any such designation or determination, stockholders' meetings shall be held at the Corporation's principal executive office.

2.2 ANNUAL MEETING.

The Board shall designate the date and time of the annual meeting. At the annual meeting, directors shall be elected and other proper business properly brought before the meeting in accordance with Sections 2.4 and 2.5 of these bylaws may be transacted.

2.3 SPECIAL MEETING.

(a) A special meeting of the stockholders may be called at any time only by (i) the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer), or (ii) the secretary of the Corporation upon proper written request or requests (each, a "Meeting Request") given by or on behalf of one or more stockholders or beneficial owners (each, a "Requesting Stockholder") that have, in the aggregate, Net Long Ownership of at least fifteen percent (15%) in voting power of the capital stock of the Corporation issued and outstanding (the "Required Percentage") and who have complied with

the procedures and requirements of this Section 2.3. No business may be transacted at such special meeting other than the business specified in the Company's notice to stockholders. Nothing contained in this Section 2.3 shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board may be held.

(b) The term "Net Long Ownership", as used herein, when used to describe the nature of a Requesting Stockholder's ownership of capital stock of the Corporation, shall mean the capital stock of the Corporation that such stockholder or, if such person is a beneficial owner, that such beneficial owner, would then be deemed to own pursuant to the definition of "net long position" set forth in Rule 14e-4 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (as so amended and inclusive of such rules and regulations, the "Exchange Act"), excluding, at any time, (i) any capital stock as to which such stockholder or beneficial owner, as the case may be, does not then have the right to vote or direct the vote and (ii) any capital stock as to which such person or beneficial owner (or any affiliate or associate of such stockholder or beneficial owner), as the case may be, had directly or indirectly entered into (or caused to be entered into) and not yet terminated a Short Interest (as defined below). Further, for purposes of such definition, in determining each stockholder or beneficial owner's "short position", the reference in Rule 14e-4 to "the date the tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired" shall instead be the date for determining a stockholder or beneficial owner's Net Long Ownership and the reference to the "highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the market price on such date.

(c) The record date for determining stockholders, or beneficial owners, as applicable, entitled to request a special meeting shall be the date on which the first Meeting Request for such special meeting was received by the secretary of the Corporation in the manner required by the preceding sentence. In determining whether a special meeting of stockholders has been requested by the Requesting Stockholders representing in the aggregate at the least the Required Percentage, multiple Meeting Requests delivered to the secretary of the Corporation will be considered together only if (i) each Meeting Request identifies substantially the same purpose or purposes of the special meeting and substantially the same matters proposed to be acted on at the special meeting, in each case as determined by the Board of Directors, and (ii) such Special Meeting Requests have been dated and delivered to the secretary of the Corporation within sixty (60) days of the earliest dated Special Meeting Request.

(d) To be in proper form, a Meeting Request shall be signed by the Requesting Stockholder or Requesting Stockholders submitting such Meeting Request, delivered or mailed to, and received by the secretary of the Corporation at, the principal executive offices of the Corporation, and set forth the following:

(i) a statement of the specific purpose or purposes of the meeting and the matters proposed to be acted on at the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of each such Requesting Stockholder;

(ii) the name and address of each such Requesting Stockholder as it appears on the Corporation's stock ledger (or, with respect to all shares to be included in the Required Percentage that are beneficially owned but not of record by each such Requesting Stockholder, the name of each broker, bank or custodian (or similar entity) of each such Requesting Stockholder with respect to such shares);

(iii) documentary evidence of the Requesting Stockholders' Net Long Ownership of shares of the Corporation's Common Stock and other capital stock;

(iv) as to each such Requesting Stockholder, the information required to be disclosed pursuant to Section 2.4(c), (d) and (e) (except that references in Section 2.4(c)(i) to (iii) to (A) "Proposing Person" shall instead refer, respectively, to each "Requesting Stockholder", any of such Requesting Stockholder's affiliates or associates (each within the meaning of Rule 12b-2 under the Exchange Act for the purposes of these bylaws) and any other person with whom such Requesting Stockholder (or any of their respective affiliates or associates) is Acting in Concert (as defined below) and (B) "annual meetings" shall instead refer to the applicable "special meeting");

(v) a representation as to whether each Requesting Stockholder intends (A) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the matters proposed to be acted on at the special meeting or (B) otherwise to solicit proxies from Stockholders in support of the matters proposed to be acted on at the special meeting;

(vi) a representation that each Requesting Stockholder, or one or more representatives of each such stockholder, intends to appear in person or by proxy at the special meeting to present the matters proposed to be acted on at the special meeting;

(vii) an acknowledgment by each Requesting Stockholder that any reduction in Net Long Ownership of capital stock of the Corporation with respect to which a Meeting Request relates following the delivery of such Meeting Request to the secretary of the Corporation shall constitute a revocation of such Meeting Request to the extent of such reduction, and an agreement to notify the Corporation if there has been any such reduction.

(viii) all other information that would be required to be filed with the U.S. Securities and Exchange Commission (the "SEC") if the Requesting Stockholders were participants in a solicitation subject to Section 14 of the Exchange Act; and

(ix) a representation that each Requesting Stockholder shall provide any other information reasonably requested by the Corporation.

The requirement set forth in clause (iv) of the immediately preceding sentence shall not apply to any Stockholder that is a broker, bank or custodian (or similar entity) and is acting solely as nominee on behalf of a beneficial owner.

(e) The Requesting Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within ten (10) business days after each such request.

(f) The Requesting Stockholders shall affirm as true and correct the information provided to the Corporation in the Meeting Request or at the Corporation's request pursuant to Section 2.3(e) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is ten (10) business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the principal executive offices of the Corporation, addressed to the secretary of the Corporation, by no later than (A) five (5) business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (B) not later than seven (7) business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of ten (10) business days before the meeting or reconvening any adjournment or postponement thereof).

(g) A Requesting Stockholder may revoke its Meeting Request at any time by written revocation delivered to the secretary of the Corporation, and if, following such revocation, there are unrevoked Meeting Requests from less than the Required Percentage, the Board, in its discretion, may cancel the special meeting of the stockholders.

(h) A special meeting so requested by Stockholders shall be held at such date, time and place, if any, either within or without the state of Delaware or by means of remote communication, as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the receipt by the secretary of the Corporation in the manner required by Section 2.3(d) of Meeting Requests satisfying the Required Percentage.

(i) A special meeting requested by stockholders or beneficial owners shall not be held if (A) such stockholders, beneficial owners, or the Meeting Requests from the Required Percentage do not comply with these bylaws or the certificate of incorporation; (B) the action relates to an item of business that is not a proper subject for stockholder action under applicable law; (C) the Meeting Request is received by the secretary of the Corporation during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of stockholders and ending on the date of adjournment of the next annual meeting of stockholders; (D) an identical or substantially similar item of business, as determined in good faith by the Board, was presented at a meeting of Stockholders held not more than sixty (60) days before the Meeting Requests satisfying the Required Percentage are received by the Secretary or (E) the Meeting Requests satisfying the Required Percentage were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law;

(j) If none of the Requesting Stockholders appear or send a duly authorized representative to present the business to be presented for consideration specified in the Meeting Requests from the Required Percentage, the Corporation need not present such business for a vote at the special meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation; and

(k) Nothing herein shall prohibit the Board from including in the Corporation's notice of any special meeting of Stockholders called by the Secretary additional matters to be submitted to the Stockholders at such meeting not included in the Meeting Request(s) in respect of such meeting.

2.4 ADVANCE NOTICE PROCEDURES FOR BUSINESS BROUGHT BEFORE A MEETING.

(a) At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business (other than the election of directors, the procedures for which are detailed in Section 2.5 of these bylaws for advance notice nominees and Section 2.18 of these bylaws for proxy access nominees) must be (i) brought before the meeting by the Corporation and specified in the notice of meeting given by or at the direction of the Board, (ii) brought before the meeting by or at the direction of the Board or (iii) otherwise properly brought before the meeting by a stockholder who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such business is proposed, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 2.4 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.4 as to such business. Except for (x) proposals properly made in accordance with Rule 14a-8 under the Exchange Act, and included in the notice of meeting given by or at the direction of the Board, and (y) the calling of special meetings of stockholders (which is governed by Section 2.3), the foregoing clause (iii) shall be the exclusive means for a stockholder to propose business to be brought before an annual meeting of the stockholders. Stockholders seeking to nominate persons for election to the Board must comply with the procedures set forth in Section 2.5 of these bylaws for advance notice nominees or Section 2.18 of these bylaws for proxy access nominees, and this Section 2.4 shall not be applicable to director nominations except as expressly provided in Section 2.5 or 2.18 of these bylaws, as applicable.

(b) Without qualification, for business to be properly brought before an annual meeting by a stockholder pursuant to this Section 2.4, the stockholder must (i) provide Timely Notice (as defined below) thereof in writing and in proper form to the secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.4. To be timely, a stockholder's notice must be delivered to, or mailed and received at, the principal executive offices of the Corporation not less than ninety (90) days nor more than one hundred twenty (120) days prior to the first anniversary of the preceding year's annual meeting; provided, however, that if the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after such anniversary date, to be timely, a stockholder's notice must be so delivered, or mailed and received, not earlier than the one hundred twentieth (120th) day prior to such annual meeting and not later than the ninetieth (90th) day prior to such annual meeting or, if later, the tenth (10th) day following the day on which public disclosure of the date of such annual meeting was first made (such notice within such time periods, "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of Timely Notice as described above.

(c) To be in proper form for purposes of this Section 2.4, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, without limitation, if applicable, the name and address that appear on the Corporation's books and records) and (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future (the disclosures to be made pursuant to the foregoing clauses (A) and (B) are referred to as "Stockholder Information");

(ii) As to each Proposing Person, (A) any 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 the Corporation, including, without limitation, due to the fact that the value of such derivative, swap or other transactions are determined by reference to the price, value or volatility of any shares of any class or series of the Corporation, or which 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 the Corporation ("Synthetic Equity Interests"), which Synthetic Equity Interests shall be disclosed without regard to whether (x) the derivative, swap or other transactions convey any voting rights in such shares to such Proposing Person, (y) the 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 derivative, swap or other transactions, (B) 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 the Corporation, (C) any agreement, arrangement, understanding or relationship, including, without limitation, 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 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 the Corporation, or which 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"), (D) any rights to dividends on the shares of any class or series of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (E) any performance related fees (other than an asset based fee) that such Proposing Person is entitled to based on any increase or decrease in the price or value of shares of any class or series of the Corporation, or any Synthetic Equity Interests or Short Interests, if any, (F)(x) if such Proposing Person is not a natural person, the identity of the natural person or persons associated with such Proposing Person responsible for the formulation of and decision to propose the

business to be brought before the meeting (such person or persons, the “Responsible Person”), the manner in which such Responsible Person was selected, any fiduciary duties owed by such Responsible Person to the equity holders or other beneficiaries of such Proposing Person, the qualifications and background of such Responsible Person and any material interests or relationships of such Responsible Person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, and (y) if such Proposing Person is a natural person, the qualifications and background of such natural person and any material interests or relationships of such natural person that are not shared generally by any other record or beneficial holder of the shares of any class or series of the Corporation and that reasonably could have influenced the decision of such Proposing Person to propose such business to be brought before the meeting, (G) any significant equity interests or any Synthetic Equity Interests or Short Interests in any principal competitor of the Corporation held by such Proposing Persons, (H) any direct or indirect interest of such Proposing Person in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, without limitation, in any such case, any employment agreement, collective bargaining agreement or consulting agreement), (I) any pending or threatened litigation in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (J) any material transaction occurring during the prior twelve months between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation, on the other hand, (K) a summary of any material discussions regarding the business proposed to be brought before the meeting (x) between or among any of the Proposing Persons or (y) between or among any Proposing Person and any other record or beneficial holder of the shares of any class or series of the Corporation (including, without limitation, their names) and (L) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act (the disclosures to be made pursuant to the foregoing clauses (A) through (L) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting pursuant to this Section 2.4, (A) a reasonably brief description of the business desired to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person, (B) the text of the proposal or business (including, without limitation, the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment), (C) a reasonably detailed description of all agreements, arrangements and understandings between or among any of the Proposing Persons or between or among any Proposing Person and any other person or entity (including, without limitation, their names) in connection with the proposal of such business by such stockholder, (D) a representation that the stockholder is a holder of record

of stock of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business, (E) a representation whether the Proposing Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the proposal and/or (2) otherwise to solicit proxies or votes from stockholders in support of such proposal and (F) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this paragraph (c) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these bylaws on behalf of a beneficial owner.

(d) For purposes of this Section 2.4, the term "Proposing Person" shall mean (i) the stockholder providing the notice of business proposed to be brought before an annual meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (iii) any affiliate or associate (each within the meaning of Rule 12b-2 under the Exchange Act for the purposes of these bylaws) of such stockholder or beneficial owner and (iv) any other person with whom such stockholder or beneficial owner (or any of their respective affiliates or associates) is Acting in Concert (as defined below).

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

(f) A stockholder providing notice of business proposed to be brought before an annual meeting pursuant to this Section 2.4 shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.4 shall be true and correct as of the record date for determining stockholders entitled to notice of the annual meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the

record date for determining stockholders entitled to notice of the annual meeting (in the case of the update and supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(g) Notwithstanding anything in these bylaws to the contrary, no business shall be conducted at an annual meeting except in accordance with this Section 2.4 (other than for the election of directors, the procedures for which are detailed in Section 2.5 of these bylaws for advance notice nominees and Section 2.18 of these bylaws for proxy access nominees). The presiding officer of an annual meeting shall, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.4, 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.

(h) The foregoing notice requirements of this Section 2.4 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Exchange Act and such stockholder's proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 2.4 shall be deemed to affect the rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(i) For purposes of these bylaws, "public disclosure" shall mean disclosure in a press release reported by a national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission (the "Commission") pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

(j) Notwithstanding the foregoing provisions of this Section 2.4, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual meeting to present proposed business, such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.4, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the annual meeting and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the annual meeting.

2.5 ADVANCE NOTICE PROCEDURES FOR NOMINATIONS OF DIRECTORS.

(a) Nominations of any person for election to the Board at an annual meeting or at a special meeting (but only if the election of directors is a matter specified in the

notice of meeting given by or at the direction of the person calling such special meeting) may be made at such meeting only (i) by or at the direction of the Board, including, without limitation, by any committee or persons appointed by the Board, (ii) by a stockholder who (A) was a stockholder of record of the Corporation (and, with respect to any beneficial owner, if different, on whose behalf such nomination is proposed to be made, only if such beneficial owner was the beneficial owner of shares of the Corporation) both at the time of giving the notice provided for in this Section 2.5 and at the time of the meeting, (B) is entitled to vote at the meeting and (C) has complied with this Section 2.5 as to such nomination, or (iii) by any Eligible Stockholder (as defined in Section 2.18 of these bylaws) in accordance with the procedures set forth in Section 2.18 of these bylaws.

(b) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board at an annual meeting pursuant to this Section 2.5, the stockholder must (i) provide Timely Notice (as defined in Section 2.4(b) of these bylaws) thereof in writing and in proper form to the secretary of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. Without qualification, if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting, then for a stockholder to make any nomination of a person or persons for election to the Board at a special meeting, the stockholder must (i) provide timely notice thereof in writing and in proper form to the secretary of the Corporation at the principal executive offices of the Corporation and (ii) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to, or mailed and received at, the principal executive offices of the Corporation not earlier than the one hundred twentieth (120th) day prior to such special meeting and not later than the ninetieth (90th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public disclosure (as defined in Section 2.4(i) of these bylaws) of the date of such special meeting was first made. In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) To be in proper form for purposes of this Section 2.5, a stockholder's notice to the secretary of the Corporation shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.4(c)(i) of these bylaws) except that for purposes of this Section 2.5, the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.4(c)(ii), except that for purposes of this Section 2.5 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.4(c)(ii) and the disclosure in clause (L) of Section 2.4(c)(ii) shall be made with respect to the election of directors at the meeting);

(iii) As to each person whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such proposed nominee

that would be required to be set forth in a stockholder's notice pursuant to this Section 2.5 if such proposed nominee were a Nominating Person, (B) all information relating to such proposed nominee that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act (including, without limitation, such proposed nominee's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), (C) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three (3) years, and any other material relationships, between or among any Nominating Person, on the one hand, and each proposed nominee, his or her respective affiliates and associates and any other persons with whom such proposed nominee (or any of his or her respective affiliates and associates) is Acting in Concert (as defined in Section 2.4(e) of these bylaws), on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the "registrant" for purposes of such rule and the proposed nominee were a director or executive officer of such registrant, (D) a representation that the Nominating Person 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 nomination, (E) a representation whether the Nominating Person intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to elect the nominee and/or (2) otherwise to solicit proxies or votes from stockholders in support of such nomination and (F) a completed and signed questionnaire, representation and agreement as provided in Section 2.5(g); and

(iv) The Corporation may require any proposed nominee to furnish such other information (A) as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as an independent director of the Corporation in accordance with the Corporation's Corporate Governance Guidelines or (B) that could be material to a reasonable stockholder's understanding of the independence or lack of independence of such proposed nominee.

(d) For purposes of this Section 2.5, the term "Nominating Person" shall mean (i) the stockholder providing the notice of the nomination proposed to be made at the meeting, (ii) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (iii) any affiliate or associate of such stockholder or beneficial owner and (iv) any other person with whom such stockholder or such beneficial owner (or any of their respective affiliates or associates) is Acting in Concert.

(e) A stockholder providing notice of any nomination proposed to be made at a meeting pursuant to this Section 2.5 shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of the record date for determining stockholders entitled to notice of the meeting and as of the date that is ten (10) business days prior to the meeting or any adjournment or postponement thereof, and such update and supplement shall be delivered to, or mailed and received by, the secretary of the Corporation at the principal executive offices of the Corporation not later than five (5) business days after the record date for determining stockholders entitled to notice of the meeting (in the case of the update and

supplement required to be made as of the record date), and not later than eight (8) business days prior to the date for the meeting or, if practicable, any adjournment or postponement thereof (and, if not practicable, on the first practicable date prior to the date to which the meeting has been adjourned or postponed) (in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof).

(f) Notwithstanding anything in these bylaws to the contrary, no person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 2.5 or the procedures set forth in Section 2.18 of these bylaws. The presiding officer at the meeting shall, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 2.5 or Section 2.18 of these bylaws, as applicable, and if he or she should so determine, he or she shall so declare such determination to the meeting and the defective nomination shall be disregarded.

(g) To be eligible to be a nominee for election as a director of the Corporation pursuant to this Section 2.5, the proposed nominee must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 2.5) to the secretary of the Corporation at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such proposed nominee (which questionnaire shall be provided by the secretary upon written request) and a written representation and agreement (in form provided by the secretary upon written request) that such proposed nominee (i) 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 proposed nominee, if elected as a director of the Corporation, will act or vote on any issue or question (a “Voting Commitment”) that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such proposed nominee’s ability to comply, if elected as a director of the Corporation, with such proposed nominee’s fiduciary duties under applicable law, (ii) is not, and will not become a party to, any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed to the Corporation and (iii) in such proposed nominee’s individual capacity and on behalf of the stockholder (or the beneficial owner, if different) on whose behalf the nomination is made, would be in compliance, if elected as a director of the Corporation, and will comply with applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation.

(h) In addition to the requirements of this Section 2.5 with respect to any nomination proposed to be made at a meeting pursuant to this Section 2.5, each Nominating Person shall comply with all applicable requirements of the Exchange Act with respect to any such nominations.

(i) Notwithstanding the foregoing provisions of this Section 2.5, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the meeting to present the proposed nomination, such proposed nomination shall not be considered, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.5, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager

or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting.

2.6 NOTICE OF STOCKHOLDERS' MEETINGS.

Unless otherwise provided by law, the certificate of incorporation or these bylaws, the notice of any meeting of stockholders shall be sent or otherwise given in accordance with either Section 2.7 or Section 8.1 of these bylaws not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. The notice shall specify the place, if any, date and hour of the meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting), the means of remote communication, 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.

2.7 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be deemed given: (a) if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the Corporation's records; or (b) if electronically transmitted, as provided in Section 8.1 of these bylaws. An affidavit of the secretary or an assistant secretary of the Corporation or of the transfer agent or any other agent of the Corporation that the notice has been given by mail or by a form of electronic transmission, as applicable, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.8 QUORUM.

Unless otherwise provided by law, the certificate of incorporation or these bylaws, the holders of a majority in voting power of the capital stock issued and outstanding and entitled to vote, present in person, or by remote communication, if applicable, or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. A quorum, once established at a meeting, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, a quorum is not present or represented at any meeting of the stockholders, then either (a) the chairperson of the meeting or (b) a majority in voting power of the stockholders entitled to vote thereon, present in person, or by remote communication, if applicable, or represented by proxy, shall have power to adjourn the meeting from time to time in the manner provided in Section 2.9 of these bylaws until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.9 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place, unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting 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 for determining the stockholders entitled to vote 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 adjourned meeting as of the record date for determining the stockholders entitled to notice of the adjourned meeting.

2.10 CONDUCT OF BUSINESS.

The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announced at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and (for any or no reason) to recess and/or adjourn the meeting, to prescribe such rules, regulations and procedures (which need not be in writing) and to do all such acts as, in the judgment of such presiding person, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding person of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present (including, without limitation, rules and procedures for removal of disruptive persons from the meeting); (c) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the presiding person of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. The presiding person at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting (including, without limitation, determinations with respect to the administration and/or interpretation of any of the rules, regulations or procedures of the meeting, whether adopted by the Board or prescribed by the person presiding over the meeting), shall, if the facts warrant, determine and declare to the meeting that a matter or business was not properly brought before the meeting and if such presiding person should so determine, such presiding person shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

2.11 VOTING.

(a) The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.13 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

(b) Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one (1) vote for each share of capital stock held by such stockholder. At all duly called or convened meetings of stockholders, at which a quorum is present, for the election of directors, each director shall be elected by a majority of the votes cast with respect to the director; provided that in any Contested Election (as defined below), directors shall be elected by the vote of a plurality of the votes cast, with votes cast including the votes of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors and cast at any meeting for the election of directors.

(c) For purposes of this Section 2.11, (i) a “majority of the votes cast” means that (A) the number of votes cast “for” a director must exceed the number of votes cast “against” that director, with votes cast including the votes cast in respect of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the election of directors and (B) abstentions and broker non-votes are not counted as votes cast, and (ii) “Contested Election” means an election of directors in which the number of nominees exceeds the number of directors to be elected as of the date that is 14 days in advance of the date the Corporation files its definitive proxy statement (regardless of whether or not thereafter revised or supplemented) with the Commission. Any director who is not so elected shall offer to tender his or her resignation to the Board in accordance with Section 3.4. The Nominating and Corporate Governance Committee shall make a recommendation to the Board as to whether to accept or reject the tendered resignation, or whether other action should be taken. The Board shall act on the tendered resignation, taking into account the recommendation of the Nominating and Corporate Governance Committee, and publicly disclose (by a press release or a filing with the Commission) its decision regarding the tendered resignation and the rationale behind the decision within ninety (90) days from the date of the certification of the election results. The Nominating and Corporate Governance Committee in making their recommendation, and the Board in making its decision, may consider any factors or other information that they consider appropriate and relevant. The director who tenders his or her resignation shall not participate in the recommendations and determinations with respect to his or her resignation. If such incumbent director’s resignation is not accepted by the Board, such director shall continue to serve until the next annual meeting and until his or her successor is duly elected, or his or her earlier death, resignation or removal. If a director’s resignation is accepted by the Board pursuant to these bylaws, or if a nominee for director is not elected and the nominee is not an incumbent director, then the Board, in its sole discretion, may fill any resulting vacancy pursuant to the provisions of Section 3.4 of these bylaws or may decrease the size of the Board as provided by the certificate of incorporation.

(d) Except as otherwise provided by the certificate of incorporation, these bylaws, the rules or regulations of any stock exchange applicable to the Corporation, or

applicable law or pursuant to any regulation applicable to the Corporation or its securities, all other elections and questions presented to the stockholders at a duly called or convened meeting, at which a quorum is present, shall be decided by the affirmative vote of the holders of a majority in voting power of the votes cast affirmatively or negatively (excluding abstentions) at the meeting by the holders entitled to vote thereon.

2.12 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Any action required or permitted to be taken by the stockholders of the Corporation must be effected at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

2.13 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING.

In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, 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, unless otherwise required by law, not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board may fix a record date, which shall not be more than sixty (60) days prior to such other action. If no such record date is fixed, 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.

2.14 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face

that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A proxy may be in the form of a telegram, cablegram or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram or other means of electronic transmission was authorized by the stockholder.

2.15 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth day before the date of 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. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (a) on a reasonably accessible electronic network, provided, that the information required to gain access to such list is provided with the notice of the meeting, or (b) during ordinary business hours, at the Corporation's principal executive office. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise provided by law, the stock ledger shall be the only evidence as to the identity of the stockholders entitled to vote in person or by proxy and the number of shares held by each of them, and as to the stockholders entitled to examine the list of stockholders.

2.16 POSTPONEMENT AND CANCELLATION OF MEETING.

Any previously scheduled annual or special meeting of the stockholders may be postponed, and any previously scheduled annual or special meeting of the stockholders may be canceled, by resolution of the Board upon public notice given prior to the time previously scheduled for such meeting.

2.17 INSPECTORS OF ELECTION.

Before any meeting of stockholders, the Board shall appoint an inspector or inspectors of election to act at the meeting or its adjournment or postponement and make a written report thereof. The number of inspectors shall be either one (1) or three (3). If any person appointed as inspector fails to appear or fails or refuses to act, then the chairperson of the meeting may, and upon the request of any stockholder or a stockholder's proxy shall, appoint a

person to fill that vacancy. Unless otherwise required by law, inspectors may be officers, employees or agents of the Corporation. Such inspectors shall have the duties prescribed by law and shall take charge of the polls and, when the vote is completed, shall make a certificate of the result of the vote taken and of such other facts as may be required by law. The inspectors of election shall perform their duties impartially, in good faith, to the best of their ability and as expeditiously as is practical. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

2.18 PROXY ACCESS.

(a) Subject to the provisions of this Section 2.18, if any Eligible Stockholder or group of up to 25 Eligible Stockholders submits to the Corporation a Proxy Access Notice (as defined below) that complies with this Section 2.18 and such Eligible Stockholder or group of Eligible Stockholders otherwise satisfies all the terms and conditions of this Section 2.18 (such Eligible Stockholder or group of Eligible Stockholders, a “Nominating Stockholder”), the Corporation shall include in its proxy statement or on its form of proxy and ballot, as applicable (collectively, “proxy materials”), for any annual meeting of stockholders, in addition to any persons nominated for election by the Board of Directors or any committee thereof:

(i) the name of any person or persons nominated by such Nominating Stockholder for election to the Board of Directors at such annual meeting of stockholders who meets the requirements of this Section 2.18 (a “Nominee”);

(ii) disclosure about the Nominee and the Nominating Stockholder required under the rules of the Commission or other applicable law to be included in the proxy materials;

(iii) subject to the other applicable provisions of this Section 2.18, a written statement, not to exceed 500 words, that is not contrary to any of the Commission’s proxy rules, including Rule 14a-9 under the Exchange Act (a “Supporting Statement”), included by the Nominating Stockholder in the Proxy Access Notice intended for inclusion in the proxy materials in support of the Nominee’s election to the Board of Directors; and

(iv) any other information that the Corporation or the Board of Directors determines, in its discretion, to include in the proxy materials relating to the nomination of the Nominee, including, without limitation, any statement in opposition to the nomination and any of the information provided pursuant to this Section 2.18.

(b) The maximum number of nominees shall be as follows:

(i) The Corporation shall not be required to include in the proxy materials for an annual meeting of stockholders more Nominees than that number of directors constituting 20% of the total number of directors of the Corporation on the last day on which a Proxy Access Notice may be submitted pursuant to this Section 2.18 (rounded down to

the nearest whole number, but not less than two) (the “Maximum Number”). The Maximum Number for a particular annual meeting shall be reduced by: (A) the number of Nominees who are subsequently withdrawn or that the Board of Directors itself decides to nominate for election at such annual meeting of stockholders (including, without limitation, any person who is or will be nominated by the Board of Directors pursuant to any agreement or understanding with one or more stockholders to avoid such person being formally proposed as a Nominee), and (B) the number of incumbent directors who had been Nominees with respect to any of the preceding two annual meetings of stockholders and whose reelection at the upcoming annual meeting of stockholders is being recommended by the Board of Directors (including, without limitation, any person who was nominated by the Board of Directors pursuant to any agreement or understanding with one or more stockholders to avoid such person being formally proposed as a Nominee). In the event that one or more vacancies for any reason occurs on the Board of Directors after the deadline set forth in Section 2.18(d) but before the date of the annual meeting of stockholders, and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Maximum Number shall be calculated based on the number of directors as so reduced.

(ii) Any Nominating Stockholder submitting more than one Nominee for inclusion in the Corporation’s proxy materials shall rank such Nominees based on the order that the Nominating Stockholder desires such Nominees to be selected for inclusion in the Corporation’s proxy materials in the event that the total number of Nominees submitted by Nominating Stockholders exceeds the Maximum Number. In the event that the number of Nominees submitted by Nominating Stockholders exceeds the Maximum Number, the highest ranking Nominee from each Nominating Stockholder will be included in the Corporation’s proxy materials until the Maximum Number is reached, going in order from largest to smallest of the number of shares of capital stock of the Corporation owned by each Nominating Stockholder as disclosed in each Nominating Stockholder’s Proxy Access Notice. If the Maximum Number is not reached after the highest ranking Nominee of each Nominating Stockholder has been selected, this process will be repeated as many times as necessary until the Maximum Number is reached. If, after the deadline for submitting a Proxy Access Notice as set forth in Section 2.18(d), a Nominating Stockholder ceases to satisfy the requirements of this Section 2.18 or withdraws its nomination or a Nominee ceases to satisfy the requirements of this Section 2.18 or becomes unwilling or unable to serve on the Board of Directors, whether before or after the mailing of definitive proxy materials, then the nomination shall be disregarded, and the Corporation: (A) shall not be required to include in its proxy materials the disregarded Nominee and (B) may otherwise communicate to its stockholders, including without limitation by amending or supplementing its proxy materials, that the Nominee will not be included as a Nominee in the proxy materials and the election of such Nominee will not be voted on at the annual meeting of stockholders.

(c) The eligibility of a Nominating Stockholder shall be as follows:

(i) As used herein, an “Eligible Stockholder” is a person who has either (A) been a record holder of the shares of capital stock used to satisfy the eligibility requirements in this Section 2.18(c) continuously for the three-year period specified in Subsection (ii) below or (B) provides to the secretary of the Corporation, within the time period referred to in Section 2.18(d), evidence of continuous ownership of such shares for such three-

year period from one or more securities intermediaries in a form that satisfies the requirements as established by the Commission for a stockholder proposal under Rule 14a-8 (or any successor rule) under the Exchange Act.

(ii) An Eligible Stockholder or group of up to 25 Eligible Stockholders may submit a nomination in accordance with this Section 2.18 only if the person or each member of the group, as applicable, has continuously owned at least the Minimum Number (as defined below) of shares of the Corporation's outstanding capital stock throughout the three-year period preceding and including the date of submission of the Proxy Access Notice, and continues to own at least the Minimum Number through the date of the annual meeting of stockholders. Two or more funds that are (A) under common management and investment control, (B) under common management and funded primarily by a single employer or (C) a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, (two or more funds referred to under any of clause (A), (B) or (C), collectively a "Qualifying Fund") shall be treated as one Eligible Stockholder. For the avoidance of doubt, in the event of a nomination by a group of Eligible Stockholders, any and all requirements and obligations for an individual Eligible Stockholder that are set forth in this Section 2.18, including the minimum holding period, shall apply to each member of such group; provided, however, that the Minimum Number shall apply to the ownership of the group in the aggregate. Should any stockholder withdraw from a group of Eligible Stockholders at any time prior to the annual meeting of stockholders, the group of Eligible Stockholders shall only be deemed to own the shares held by the remaining members of the group.

(iii) The "Minimum Number" of shares of the Corporation's capital stock means three percent (3%) of the number of outstanding shares of capital stock as of the most recent date for which such amount is given in any filing by the Corporation with the Commission prior to the submission of the Proxy Access Notice.

(iv) For purposes of this Section 2.18, an Eligible Stockholder "owns" only those outstanding shares of the capital stock of the Corporation as to which the Eligible Stockholder possesses both: (A) the full voting and investment rights pertaining to the shares; and (B) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided, that the number of shares calculated in accordance with clauses (A) and (B) shall not include any shares: (1) sold by such Eligible Stockholder or any of its affiliates in any transaction that has not been settled or closed, (2) borrowed by such Eligible Stockholder or any of its affiliates for any purpose or purchased by such Eligible Stockholder or any of its affiliates pursuant to an agreement to resell, or (3) subject to any option, warrant, forward contract, swap, contract of sale, other derivative or similar agreement entered into by such Eligible Stockholder or any of its affiliates, whether any such instrument or agreement is to be settled with shares, cash or other property based on the notional amount or value of outstanding shares of the Corporation, in any such case which instrument or agreement has, or is intended to have, the purpose or effect of: (w) reducing in any manner, to any extent or at any time in the future, such Eligible Stockholder's or any of its affiliates' full right to vote or direct the voting of any such shares, and/or (x) hedging, offsetting, or altering to any degree, gain or loss arising from the full economic ownership of such shares by such Eligible Stockholder or any of its affiliates. An Eligible Stockholder "owns" shares held in the name of a nominee or other

intermediary so long as the Eligible 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. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has delegated any voting power by means of a proxy, power of attorney, or other similar instrument or arrangement that is revocable at any time by the Eligible Stockholder. An Eligible Stockholder's ownership of shares shall be deemed to continue during any period in which the Eligible Stockholder has loaned such shares; provided, that the Eligible Stockholder has the power to recall such loaned shares on no more than three (3) business days' notice and includes in the Proxy Access Notice an agreement that it will (y) promptly recall such loaned shares upon being notified that any of its Nominees will be included in the Corporation's proxy materials pursuant to this Section 2.18 and (z) continue to hold such recalled shares (including the right to vote such shares) through the date of the annual meeting of stockholders. The terms "owned," "owning" and other variations of the word "own" shall have correlative meanings. Each Nominating Stockholder shall furnish any other information that may reasonably be required by the Board of Directors to verify such stockholder's continuous ownership of at least the Minimum Number during the three-year period referred to above.

(v) No person may be in more than one group constituting a Nominating Stockholder, and if any person appears as a member of more than one group, it shall be deemed to be a member of the group that owns the greatest aggregate number of shares of the Corporation's capital stock as reflected in the Proxy Access Notice, and no shares may be attributed as owned by more than one person constituting a Nominating Stockholder under this Section 2.18.

(d) To nominate a Nominee, the Nominating Stockholder must, not less than one hundred twenty (120) days nor more than one hundred fifty (150) days prior to the first anniversary of the date of the Corporation's proxy materials released to stockholders in connection with the preceding year's annual meeting of stockholders, submit to the secretary of the Corporation at the principal executive offices of the Corporation all of the following information and documents (collectively, the "Proxy Access Notice"):

(i) A Schedule 14N (or any successor form) relating to the Nominee, completed and filed with the Commission by the Nominating Stockholder as applicable, in accordance with the Commission's rules;

(ii) A written notice of the nomination of such Nominee that includes the following additional information, agreements, representations and warranties by the Nominating Stockholder (including each group member):

(A) the information, representations and agreements required with respect to the nomination of directors pursuant to Section 2.5 of Article II of these bylaws;

(B) the details of any relationship that existed within the past three years and that would have been described pursuant to Item 6(e) of Schedule 14N (or any successor item) if it existed on the date of submission of the Schedule 14N;

(C) a representation and warranty that the Nominating Stockholder did not acquire, and is not holding, securities of the Corporation for the purpose or with the effect of influencing or changing control of the Corporation;

(D) a representation and warranty that the Nominee's candidacy or, if elected, Board of Directors membership, would not violate the certificate of incorporation, these bylaws, or any applicable state or federal law or the rules of any stock exchange on which the Corporation's capital stock is traded;

(E) a representation and warranty that the Nominee:

(1) does not have any direct or indirect material relationship with the Corporation and otherwise would qualify as an "independent director" under the rules of the primary stock exchange on which the Corporation's capital stock is traded and any applicable rules of the Commission;

(2) would meet the audit committee independence requirements under the rules of the Commission and of the principal stock exchange on which the Corporation's capital stock is traded;

(3) would qualify as a "non-employee director" for the purposes of Rule 16b-3 under the Exchange Act (or any successor rule);

(4) would qualify as an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code of 1986, as amended (or any successor provision);

(5) is not and has not been, within the past three years, an officer, director, affiliate or representative of a competitor, as defined under Section 8 of the Clayton Antitrust Act of 1914, as amended, and if the Nominee has held any such position during this period, details thereof; and

(6) is not and has not been subject to any event specified in Rule 506(d)(1) of Regulation D (or any successor rule) under the Securities Act of 1933, as amended, or Item 401(f) of Regulation S-K (or any successor rule) under the Exchange Act, without reference to whether the event is material to an evaluation of the ability or integrity of the Nominee;

(F) a representation and warranty that the Nominating Stockholder satisfies the eligibility requirements set forth in Section 2.18(c), has provided evidence of ownership to the extent required by Section 2.18(c)(i), and such evidence of ownership is true, complete and correct in all respects;

(G) a representation and warranty that the Nominating Stockholder intends to continue to satisfy the eligibility requirements described in Section 2.18(c) through the date of the annual meeting of stockholders;

(H) a statement as to whether or not the Nominating Stockholder intends to continue to hold the Minimum Number of shares for at least one year following the annual meeting of stockholders;

(I) a representation and warranty that the Nominating Stockholder will not engage in or support, directly or indirectly, a “solicitation” within the meaning of Rule 14a-1(l) (without reference to the exception in Section 14a-1(l)(2)(iv)) (or any successor rules) with respect to the annual meeting of stockholders, other than a solicitation in support of the Nominee or any nominee of the Board of Directors;

(J) a representation and warranty that the Nominating Stockholder will not use any proxy card other than the Corporation’s proxy card in soliciting stockholders in connection with the election of a Nominee at the annual meeting of stockholders;

(K) if desired by the Nominating Stockholder, a Supporting Statement;

(L) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all group members with respect to matters relating to the nomination, including withdrawal of the nomination;

(M) in the case of any Eligible Stockholder that is a Qualifying Fund consisting of two or more funds, documentation demonstrating that the funds are eligible to be treated as a Qualifying Fund and that each such fund comprising the Qualifying Fund otherwise meets the requirements set forth in this Section 2.18; and

(N) a representation and warranty that the Nominating Stockholder has not nominated and will not nominate for election any individual as director at the annual meeting of stockholders other than its Nominee(s).

(iii) An executed agreement pursuant to which the Nominating Stockholder (including each group member) agrees:

(A) to comply with all applicable laws, rules and regulations in connection with the nomination, solicitation and election;

(B) to file with the Commission any solicitation or other communication with the Corporation’s stockholders relating to any Nominee or one or more of the Corporation’s directors or director nominees, regardless of whether any such filing is required under any law, rule or regulation or whether any exemption from filing is available for such materials under any law, rule or regulation;

(C) to assume all liability stemming from an action, suit or proceeding concerning any actual or alleged legal or regulatory violation arising out of any communication by the Nominating Stockholder with the Corporation, its stockholders or any other person in connection with the nomination or election of directors, including, without limitation, the Proxy Access Notice;

(D) to indemnify and hold harmless (jointly and severally with all other group members, in the case of a group member) the Corporation and each of its directors, officers and employees individually against any liability, loss, damages, expenses, demands, claims or other costs (including reasonable attorneys' fees and disbursements of counsel) incurred in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Nominating Stockholder (including, without limitation, relating to any breach or alleged breach of its obligations, agreements, representations or warranties) pursuant to this Section 2.18;

(E) in the event that (1) any information included in the Proxy Access Notice, or any other communication by the Nominating Stockholder (including with respect to any group member) with the Corporation, its stockholders or any other person in connection with the nomination or election of directors ceases to be true and accurate in all material respects (or omits a material fact necessary to make the statements made not misleading), or (2) the Nominating Stockholder (including any group member) fails to continue to satisfy the eligibility requirements described in Section 2.18(c), the Nominating Stockholder shall promptly (and in any event within forty-eight (48) hours of discovering such misstatement, omission or failure) (x) in the case of clause (1) above, notify the Corporation and any other recipient of such communication of the misstatement or omission in such previously provided information and of the information that is required to correct the misstatement or omission, and (y) in the case of clause (2) above, notify the Corporation why, and in what regard, the Nominating Stockholder fails to comply with the eligibility requirements described in Section 2.18(c) (it being understood that providing any such notification referenced in clauses (x) and (y) above shall not be deemed to cure any defect or limit the Corporation's rights to omit a Nominee from its proxy materials as provided in this Section 2.18); and

(iv) An executed agreement by the Nominee:

(A) to provide to the Corporation a completed copy of the Corporation's director questionnaire and such other information as the Corporation may reasonably request;

(B) that the Nominee (1) consents to be named in the proxy materials as a nominee and, if elected, to serve on the Board of Directors and (2) has read and agrees to adhere to the Corporation's Corporate Governance Guidelines and any other Corporation policies and guidelines applicable to directors generally; and

(C) that the Nominee is not and will not become a party to (1) any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director of the Corporation that has not been disclosed to the Corporation in writing, (2) any Voting Commitment that has not been disclosed to the Corporation in writing, or (3) any Voting Commitment that could limit or interfere with the Nominee's ability to comply, if elected as a director of the Corporation, with its fiduciary duties under applicable law or with the Corporation's Corporate Governance Guidelines and any other Corporation policies and guidelines applicable to directors generally.

The information and documents required by this Section 2.18(d) shall be: (x) provided with respect to and executed by each group member, in the case of information applicable to group members; and (y) provided with respect to the persons specified in Instruction 1 to Items 6(c) and (d) of Schedule 14N (or any successor item) if and to the extent applicable to a Nominating Stockholder or group member. The Proxy Access Notice shall be deemed submitted on the date on which all the information and documents referred to in this Section 2.18(d) (other than such information and documents contemplated to be provided after the date the Proxy Access Notice is provided) have been delivered to or, if sent by mail, received by the secretary of the Corporation. For the avoidance of doubt, in no event shall any adjournment or postponement of an annual meeting of stockholders or the public announcement thereof commence a new time period for the giving of a Proxy Access Notice pursuant to this Section 2.18.

(e) Exceptions and clarifications to these provisions are as follows:

(i) Notwithstanding anything to the contrary contained in this Section 2.18, (x) the Corporation may omit from its proxy materials any Nominee and any information concerning such Nominee (including a Nominating Stockholder's Supporting Statement), (y) any nomination shall be disregarded, and (z) no vote on such Nominee will occur (notwithstanding that proxies in respect of such vote may have been received by the Corporation), and the Nominating Stockholder may not, after the last day on which a Proxy Access Notice would be timely, cure in any way any defect preventing the nomination of the Nominee, if:

(A) the Corporation receives a notice pursuant to Section 2.5 of this Article II of these bylaws that a stockholder intends to nominate a candidate for director at the annual meeting of stockholders;

(B) the Nominating Stockholder or the designated lead group member, as applicable, or any qualified representative thereof, does not appear at the annual meeting of stockholders to present the nomination submitted pursuant to this Section 2.18 or the Nominating Stockholder withdraws its nomination prior to the annual meeting of stockholders;

(C) the Board of Directors determines that such Nominee's nomination or election to the Board of Directors would result in the Corporation violating or failing to be in compliance with the certificate of incorporation, these bylaws or any applicable law, rule or regulation to which the Corporation is subject, including any rules or regulations of any stock exchange on which the Corporation's capital stock is traded;

(D) the Nominee was nominated for election to the Board of Directors pursuant to this Section 2.18 at one of the Corporation's two preceding annual meetings of stockholders and (1) its nomination was withdrawn, (2) such Nominee became ineligible to serve as a Nominee or as a director or (3) such Nominee received a vote of less than 25% of the shares of capital stock entitled to vote for such Nominee; or

(E) (1) the Nominating Stockholder fails to continue to satisfy the eligibility requirements described in Section 2.18(c), (2) any of the representations and warranties made in the Proxy Access Notice cease to be true, complete and correct in all material respects (or omits to state a material fact necessary to make the statements made therein not misleading), (3) the Nominee becomes unwilling or unable to serve on the Board of Directors or (4) the Nominating Stockholder or the Nominee materially violates or breaches any of its agreements, representations or warranties in this Section 2.18;

(ii) Notwithstanding anything to the contrary contained in this Section 2.18, the Corporation may omit from its proxy materials, or may supplement or correct, any information, including all or any portion of the Supporting Statement included in the Proxy Access Notice, if: (A) such information is not true and correct in all material respects or omits a material statement necessary to make the statements therein not misleading; (B) such information directly or indirectly impugns the character, integrity or personal reputation of, or, without factual foundation, directly or indirectly makes charges concerning improper, illegal or immoral conduct or associations with respect to, any person; or (C) the inclusion of such information in the proxy materials would otherwise violate the Commission's proxy rules or any other applicable law, rule or regulation. Once submitted with a Proxy Access Notice, a Supporting Statement may not be amended, supplemented or modified by the Nominee or Nominating Stockholder.

(iii) For the avoidance of doubt, the Corporation may solicit against, and include in the proxy materials its own statement relating to, any Nominee.

(iv) This Section 2.18 provides the exclusive method for a stockholder to include nominees for election to the Board of Directors in the Corporation's proxy materials (including, without limitation, any proxy card or written ballot).

(v) The interpretation of, and compliance with, any provision of this Section 2.18, including the representations, warranties and covenants contained herein, shall be determined by the Board of Directors or, in the discretion of the Board of Directors, one or more of its designees, in each case acting in good faith.

ARTICLE III

DIRECTORS

3.1 POWERS.

Subject to the provisions of the DGCL and any limitations in the certificate of incorporation relating to action required to be approved by the stockholders or by the outstanding shares, the business and affairs of the Corporation shall be managed and all corporate powers shall be exercised by or under the direction of the Board.

3.2 NUMBER OF DIRECTORS.

The authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of at least one (1) member. No

reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, QUALIFICATION AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these bylaws, each director, including, without limitation, a director elected to fill a vacancy, shall hold office until the expiration of the term for which elected and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. The Corporation may also have, at the discretion of the Board, a chairperson of the Board and a vice chairperson of the Board. The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.4 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission to the Corporation at its principal office or to the chairperson of the Board or the Corporation's chief executive officer, president or secretary. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies.

Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors shall, unless the Board determines by resolution that any such vacancies or newly created directorships shall be filled by stockholders, be filled only by a majority of the directors then in office, although less than a quorum, or by a sole remaining director. Any director elected in accordance with the preceding sentence shall hold office for the remainder of the full term of the director for which the vacancy was created or occurred and until such director's successor shall have been elected and qualified. A vacancy in the Board shall be deemed to exist under these bylaws in the case of the death, removal or resignation of any director.

3.5 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board may hold meetings, both regular and special, either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or any committee, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting pursuant to this bylaw shall constitute presence in person at the meeting.

3.6 REGULAR MEETINGS.

Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by the Board; provided that any director who is absent when such determination is made shall be given notice of the determination. A regular meeting of the Board may be held without notice immediately after and at the same place as the annual meeting of stockholders.

3.7 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors.

Notice of the time and place of special meetings shall be:

- (a) delivered personally by hand, by courier or by telephone;
- (b) sent by United States first-class mail, postage prepaid;
- (c) sent by facsimile; or
- (d) sent by electronic mail,

directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation's records.

If the notice is (a) delivered personally by hand, by courier or by telephone, (b) sent by facsimile or (c) sent by electronic mail, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. Any oral notice may be communicated to the director. The notice need not specify the place of the meeting (if the meeting is to be held at the Corporation's principal executive office) nor the purpose of the meeting.

3.8 QUORUM.

The greater of (a) a majority of the directors at any time in office and (b) one-third of the number of directors established by the Board pursuant to Section 3.2 of these bylaws shall constitute a quorum of the Board for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.9 BOARD ACTION BY CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

3.10 FEES AND COMPENSATION OF DIRECTORS.

Unless otherwise restricted by the certificate of incorporation or these bylaws, the Board shall have the authority to fix the compensation of directors.

3.11 REMOVAL OF DIRECTORS.

Subject to the rights of the holders of the shares of any series of Preferred Stock, the Board or any individual director may be removed from office only by the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

ARTICLE IV

COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

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

4.2 COMMITTEE MINUTES.

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

4.3 MEETINGS AND ACTION OF COMMITTEES.

Meetings and actions of committees shall be governed by, and held and taken in accordance with, the provisions of:

- (a) Section 3.5 of these bylaws (place of meetings and meetings by telephone);
- (b) Section 3.6 of these bylaws (regular meetings);
- (c) Section 3.7 of these bylaws (special meetings and notice);
- (d) Section 3.8 of these bylaws (quorum);
- (e) Section 7.12 of these bylaws (waiver of notice); and
- (f) Section 3.9 of these bylaws (action without a meeting), with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. However:
 - (i) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
 - (ii) special meetings of committees may also be called by resolution of the Board; and
 - (iii) notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V

OFFICERS

5.1 OFFICERS.

The officers of the Corporation shall be a president and a secretary. The Corporation may also have, at the discretion of the Board, a chief executive officer, a chief financial officer or treasurer, one (1) or more vice presidents, one (1) or more assistant vice presidents, one (1) or more assistant treasurers, one (1) or more assistant secretaries, and any such other officers as may be appointed in accordance with the provisions of these bylaws. Any number of offices may be held by the same person.

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the Corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 of these bylaws, subject to the rights, if any, of an officer under any contract of employment.

5.3 SUBORDINATE OFFICERS.

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

5.4 REMOVAL AND RESIGNATION OF OFFICERS.

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

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

5.5 VACANCIES IN OFFICES.

Any vacancy occurring in any office of the Corporation shall be filled by the Board or as provided in Section 5.3 of these bylaws.

5.6 REPRESENTATION OF SHARES OF OTHER CORPORATIONS.

The chairperson of the Board, the president, any vice president, the treasurer, the secretary or assistant secretary of this Corporation, or any other person authorized by the Board or the president or a vice president, is authorized to vote, represent and exercise on behalf of this Corporation all rights incident to any and all securities of any other entity or entities standing in the name of this Corporation. The authority granted herein may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by such person having the authority.

5.7 AUTHORITY AND DUTIES OF OFFICERS.

All officers of the Corporation shall respectively have such authority and perform such duties in the management of the business of the Corporation as may be designated from time to time by the Board and, to the extent not so provided, as generally pertain to their respective offices, subject to the control of the Board.

ARTICLE VI

RECORDS AND REPORTS

6.1 MAINTENANCE OF RECORDS.

The Corporation shall, either at its principal executive office or at such place or places as designated by the Board, keep a record of its stockholders listing their names and addresses and the number and class of shares held by each stockholder, a copy of these bylaws as amended to date, accounting books and other records.

ARTICLE VII

GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

The Board, except as otherwise provided in these bylaws, may authorize any officer or officers, or agent or agents, to enter into any contract or execute any instrument in the name of and on behalf of the Corporation; such authority may be general or confined to specific instances. Unless so authorized or ratified by the Board or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the Corporation shall be represented by certificates or shall be uncertificated. Certificates for the shares of stock, if any, shall be in such form as is consistent with the certificate of incorporation and applicable law.

Every holder of stock represented by a certificate shall be entitled to have a certificate signed by, or in the name of the Corporation by the chairperson or vice-chairperson of the Board, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary of the Corporation representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if he were such officer, transfer agent or registrar at the date of issue.

The Corporation may issue the whole or any part of its shares as partly paid and subject to call for the remainder of the consideration to be paid therefor. Upon the face or back of each stock certificate issued to represent any such partly paid shares, or upon the books and records of the Corporation in the case of uncertificated partly paid shares, the total amount of the consideration to be paid therefor and the amount paid thereon shall be stated. Upon the declaration of any dividend on fully paid shares, the Corporation shall declare a dividend upon

partly paid shares of the same class, but only upon the basis of the percentage of the consideration actually paid thereon.

7.3 SPECIAL DESIGNATION ON CERTIFICATES.

If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 LOST CERTIFICATES.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the Corporation and cancelled at the same time. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction and definitions in the DGCL shall govern the construction of these bylaws. 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.

7.6 DIVIDENDS.

The Board, subject to any restrictions contained in either (a) the DGCL or (b) the certificate of incorporation, may declare and pay dividends upon the shares of its capital stock. Dividends may be paid in cash, in property or in shares of the Corporation's capital stock.

The Board may set apart out of any of the funds of the Corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve. Such purposes shall include but not be limited to equalizing dividends, repairing or maintaining any property of the Corporation, and meeting contingencies.

7.7 FISCAL YEAR.

The fiscal year of the Corporation shall be fixed by resolution of the Board and may be changed by the Board.

7.8 SEAL.

The Corporation may adopt a corporate seal, which shall be adopted and which may be altered by the Board. The Corporation may use the corporate seal by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

7.9 TRANSFER OF STOCK.

Shares of the Corporation shall be transferable in the manner prescribed by law and in these bylaws. Shares of stock of the Corporation shall be transferred on the books of the Corporation only by the holder of record thereof or by such holder's attorney duly authorized in writing, upon surrender to the Corporation of the certificate or certificates representing such shares endorsed by the appropriate person or persons (or by delivery of duly executed instructions with respect to uncertificated shares), with such evidence of the authenticity of such endorsement or execution, transfer, authorization and other matters as the Corporation may reasonably require, and accompanied by all necessary stock transfer stamps. 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 the names of the persons from and to whom it was transferred.

7.10 STOCK TRANSFER AGREEMENTS.

The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the Corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL.

7.11 REGISTERED STOCKHOLDERS.

The Corporation:

- (a) 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;
- (b) shall be entitled to hold liable for calls and assessments the person registered on its books as the owner of shares; and
- (c) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.12 WAIVER OF NOTICE.

Whenever notice is required to be given under any provision of the DGCL, the certificate of incorporation or these bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, 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 a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the certificate of incorporation or these bylaws.

ARTICLE VIII

NOTICE BY ELECTRONIC TRANSMISSION

8.1 NOTICE BY ELECTRONIC TRANSMISSION.

Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if: (a) the Corporation is unable to deliver by electronic transmission two (2) consecutive notices given by the Corporation in accordance with such consent; and (b) such inability becomes known to the secretary or an assistant secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice.

However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

Any notice given pursuant to the preceding paragraph shall be deemed given:

- (a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;
- (b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;
- (c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (i) such posting and (ii) the giving of such separate notice; and
- (d) if by any other form of electronic transmission, when directed to the stockholder.

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

8.2 DEFINITION OF ELECTRONIC TRANSMISSION.

For the purposes of these bylaws, an “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

ARTICLE IX

INDEMNIFICATION AND ADVANCEMENT

9.1 ACTIONS, SUITS AND PROCEEDINGS OTHER THAN BY OR IN THE RIGHT OF THE CORPORATION.

The Corporation shall indemnify each person who was or is a party or threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that he or she is or was, or has agreed to become, a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) (all such persons being referred to hereafter as an “Indemnitee”), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys’ fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974), and amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that Indemnitee did not act in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.2 ACTIONS OR SUITS BY OR IN THE RIGHT OF THE CORPORATION.

The Corporation shall indemnify any Indemnitee who was or is a party to or threatened to be made a party to any threatened, pending or completed action or suit by or in the

right of the Corporation to procure a judgment in its favor by reason of the fact that Indemnitee is or was, or has agreed to become, a director or officer of the Corporation, or, while a director or officer of the Corporation, is or was serving, or has agreed to serve, at the request of the Corporation, as a director, officer, partner, employee or trustee of, or in a similar capacity with, another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan), or by reason of any action alleged to have been taken or omitted in such capacity, against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection with such action, suit or proceeding and any appeal therefrom, if Indemnitee acted in good faith and in a manner which Indemnitee reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this Section 9.2 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged to be liable to the Corporation, unless, and only to the extent, that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of such liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnity for such expenses (including, without limitation, attorneys' fees) which the Court of Chancery of Delaware or such other court shall deem proper.

9.3 INDEMNIFICATION FOR EXPENSES OF SUCCESSFUL PARTY.

Notwithstanding any other provisions of this Article IX, to the extent that an Indemnitee has been successful, on the merits or otherwise, in defense of any action, suit or proceeding referred to in Sections 9.1 and 9.2 of these bylaws, or in defense of any claim, issue or matter therein, or on appeal from any such action, suit or proceeding, Indemnitee shall be indemnified against all expenses (including, without limitation, attorneys' fees) actually and reasonably incurred by or on behalf of Indemnitee in connection therewith. Without limiting the foregoing, if any action, suit or proceeding is disposed of, on the merits or otherwise (including, without limitation, a disposition without prejudice), without (a) the disposition being adverse to Indemnitee, (b) an adjudication that Indemnitee was liable to the Corporation, (c) a plea of guilty or nolo contendere by Indemnitee, (d) an adjudication that Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and (e) with respect to any criminal proceeding, an adjudication that Indemnitee had reasonable cause to believe his or her conduct was unlawful, Indemnitee shall be considered for the purposes hereof to have been wholly successful with respect thereto.

9.4 NOTIFICATION AND DEFENSE OF CLAIM.

As a condition precedent to an Indemnitee's right to be indemnified, such Indemnitee must notify the Corporation in writing as soon as practicable of any action, suit, proceeding or investigation involving such Indemnitee for which indemnity will or could be sought. With respect to any action, suit, proceeding or investigation of which the Corporation is so notified, the Corporation will be entitled to participate therein at its own expense and/or to assume the defense thereof at its own expense, with legal counsel reasonably acceptable to Indemnitee. After notice from the Corporation to Indemnitee of its election so to assume such defense, the Corporation shall not be liable to Indemnitee for any legal or other expenses subsequently incurred by Indemnitee in connection with such action, suit, proceeding or investigation, other than as provided below in this Section 9.4. Indemnitee shall have the right to

employ his or her own counsel in connection with such action, suit, proceeding or investigation, but the fees and expenses of such counsel incurred after notice from the Corporation of its assumption of the defense thereof shall be at the expense of Indemnitee unless (a) the employment of counsel by Indemnitee has been authorized by the Corporation, (b) counsel to Indemnitee shall have reasonably concluded that there may be a conflict of interest or position on any significant issue between the Corporation and Indemnitee in the conduct of the defense of such action, suit, proceeding or investigation or (c) the Corporation shall not in fact have employed counsel to assume the defense of such action, suit, proceeding or investigation, in each of which cases the fees and expenses of counsel for Indemnitee shall be at the expense of the Corporation, except as otherwise expressly provided by this Article IX. The Corporation shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Corporation or as to which counsel for Indemnitee shall have reasonably made the conclusion provided for in clause (b) above. The Corporation shall not be required to indemnify Indemnitee under this Article IX for any amounts paid in settlement of any action, suit, proceeding or investigation effected without its written consent. The Corporation shall not settle any action, suit, proceeding or investigation in any manner which would impose any penalty or limitation on Indemnitee without Indemnitee's written consent. Neither the Corporation nor Indemnitee will unreasonably withhold or delay its consent to any proposed settlement.

9.5 ADVANCE OF EXPENSES.

Subject to the provisions of Sections 9.4 and 9.6 of these bylaws, in the event of any threatened or pending action, suit, proceeding or investigation of which the Corporation receives notice under this Article IX, any expenses (including, without limitation, attorneys' fees) incurred by or on behalf of Indemnitee in defending an action, suit, proceeding or investigation or any appeal therefrom shall be paid by the Corporation in advance of the final disposition of such matter; provided, however, that the payment of such expenses incurred by or on behalf of Indemnitee in advance of the final disposition of such matter shall be made only upon receipt of an undertaking by or on behalf of Indemnitee to repay all amounts so advanced in the event that it shall ultimately be determined by final judicial decision from which there is no further right to appeal that Indemnitee is not entitled to be indemnified by the Corporation as authorized in this Article IX; and provided, further that no such advancement of expenses shall be made under this Article IX if it is determined (in the manner described in Section 9.6 of these bylaws) that (a) Indemnitee did not act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation, or (b) with respect to any criminal action or proceeding, Indemnitee had reasonable cause to believe his or her conduct was unlawful. Such undertaking shall be accepted without reference to the financial ability of Indemnitee to make such repayment.

9.6 PROCEDURE FOR INDEMNIFICATION AND ADVANCEMENT OF EXPENSES.

In order to obtain indemnification or advancement of expenses pursuant to Section 9.1, 9.2, 9.3 or 9.5 of these bylaws, an Indemnitee shall submit to the Corporation a written request. Any such advancement of expenses shall be made promptly, and in any event within 60 days after receipt by the Corporation of the written request of Indemnitee, unless (a)

the Corporation has assumed the defense pursuant to Section 9.4 of these bylaws (and none of the circumstances described in Section 9.4 of these bylaws that would nonetheless entitle the Indemnitee to indemnification for the fees and expenses of separate counsel have occurred) or (b) the Corporation determines within such 60-day period that Indemnitee did not meet the applicable standard of conduct set forth in Section 9.1, 9.2 or 9.5 of these bylaws, as the case may be. Any such indemnification, unless ordered by a court, shall be made with respect to requests under Section 9.1 or 9.2 of these bylaws only as authorized in the specific case upon a determination by the Corporation that the indemnification of Indemnitee is proper because Indemnitee has met the applicable standard of conduct set forth in Section 9.1 or 9.2 of these bylaws, as the case may be. Such determination shall be made in each instance (a) by a majority vote of the directors of the Corporation consisting of persons who are not at that time parties to the action, suit or proceeding in question (“disinterested directors”), whether or not a quorum, (b) by a committee of disinterested directors designated by majority vote of disinterested directors, whether or not a quorum, (c) if there are no disinterested directors, or if the disinterested directors so direct, by independent legal counsel (who may, to the extent permitted by law, be regular legal counsel to the Corporation) in a written opinion or (d) by the stockholders of the Corporation.

9.7 REMEDIES.

The right to indemnification or advancement of expenses as granted by this Article IX shall be enforceable by Indemnitee in any court of competent jurisdiction. Neither the failure of the Corporation to have made a determination prior to the commencement of such action that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Corporation pursuant to Section 9.6 of these bylaws that Indemnitee has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that Indemnitee has not met the applicable standard of conduct. In any suit brought by Indemnitee to enforce a right to indemnification or advancement, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall have the burden of proving that Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article IX. Indemnitee’s expenses (including, without limitation, attorneys’ fees) reasonably incurred in connection with successfully establishing Indemnitee’s right to indemnification or advancement, in whole or in part, in any such proceeding shall also be indemnified by the Corporation to the fullest extent permitted by law. Notwithstanding the foregoing, in any suit brought by Indemnitee to enforce a right to indemnification hereunder it shall be a defense that the Indemnitee has not met any applicable standard for indemnification set forth in the DGCL.

9.8 LIMITATIONS.

Notwithstanding anything to the contrary in this Article IX, except as set forth in Section 9.7 of these bylaws, the Corporation shall not indemnify an Indemnitee pursuant to this Article IX in connection with a proceeding (or part thereof) initiated by such Indemnitee unless the initiation thereof was approved by the Board. Notwithstanding anything to the contrary in this Article IX, the Corporation shall not indemnify (or advance expenses to) an Indemnitee to the extent such Indemnitee is reimbursed (or advanced expenses) from the proceeds of insurance,

and in the event the Corporation makes any indemnification (or advancement) payments to an Indemnitee and such Indemnitee is subsequently reimbursed from the proceeds of insurance, such Indemnitee shall promptly refund indemnification (or advancement) payments to the Corporation to the extent of such insurance reimbursement.

9.9 SUBSEQUENT AMENDMENT.

No amendment, termination or repeal of this Article IX or of the relevant provisions of the DGCL or any other applicable laws shall adversely affect or diminish in any way the rights of any Indemnitee to indemnification or advancement of expenses under the provisions hereof with respect to any action, suit, proceeding or investigation arising out of or relating to any actions, transactions or facts occurring prior to the final adoption of such amendment, termination or repeal.

9.10 OTHER RIGHTS.

The indemnification and advancement of expenses provided by this Article IX shall not be deemed exclusive of any other rights to which an Indemnitee seeking indemnification or advancement of expenses may be entitled under any law (common or statutory), agreement or vote of stockholders or disinterested directors or otherwise, both as to action in Indemnitee's official capacity and as to action in any other capacity while holding office for the Corporation, and shall continue as to an Indemnitee who has ceased to be a director or officer, and shall inure to the benefit of the estate, heirs, executors and administrators of Indemnitee. Nothing contained in this Article IX shall be deemed to prohibit, and the Corporation is specifically authorized to enter into, agreements with officers and directors providing indemnification and advancement rights and procedures different from those set forth in this Article IX. In addition, the Corporation may, to the extent authorized from time to time by the Board, grant indemnification and advancement rights to other employees or agents of the Corporation or other persons serving the Corporation and such rights may be equivalent to, or greater or less than, those set forth in this Article IX.

9.11 PARTIAL INDEMNIFICATION.

If an Indemnitee is entitled under any provision of this Article IX to indemnification by the Corporation for some or a portion of the expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement actually and reasonably incurred by or on behalf of Indemnitee in connection with any action, suit, proceeding or investigation and any appeal therefrom but not, however, for the total amount thereof, the Corporation shall nevertheless indemnify Indemnitee for the portion of such expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) or amounts paid in settlement to which Indemnitee is entitled.

9.12 INSURANCE.

The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise (including, without limitation, any employee benefit plan) against any expense, liability or loss incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

9.13 SAVINGS CLAUSE.

If this Article IX or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify each Indemnitee as to any expenses (including, without limitation, attorneys' fees), liabilities, losses, judgments, fines (including, without limitation, excise taxes and penalties arising under the Employee Retirement Income Security Act of 1974) and amounts paid in settlement in connection with any action, suit, proceeding or investigation, whether civil, criminal or administrative, including, without limitation, an action by or in the right of the Corporation, to the fullest extent permitted by any applicable portion of this Article IX that shall not have been invalidated and to the fullest extent permitted by applicable law.

9.14 DEFINITIONS.

Terms used in this Article IX and defined in Section 145(h) and Section 145(i) of the DGCL shall have the respective meanings assigned to such terms in such Section 145(h) and Section 145(i).

ARTICLE X

AMENDMENTS.

Subject to the limitations set forth in Section 9.9 of these bylaws or the provisions of the certificate of incorporation, the Board is expressly empowered to adopt, amend or repeal the bylaws of the Corporation. The stockholders also shall have power to adopt, amend or repeal the bylaws of the Corporation; provided, however, that in addition to any vote of the holders of any class or series of stock of the Corporation required by law or by the certificate of incorporation, such action by stockholders shall require the affirmative vote of the holders of at least a majority in voting power of the outstanding shares of capital stock of the Corporation entitled to vote thereon.

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January 28, 2022

VIA E-MAIL (shareholderproposals@sec.gov)
Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549

*NOT ADMITTED TO THE NEW YORK BAR

Re: Teladoc Health, Inc. Stockholder Proposal of James McRitchie

Ladies and Gentlemen:

We refer to our letter, dated January 21, 2022, (the "No-Action Request"), pursuant to which we requested that the Staff of the Division of Corporate Finance concur with our view that Teladoc Health, Inc. (the "Company") may exclude the stockholder proposal and supporting statement (the "Proposal") submitted by James McRitchie (the "Proponent") from the proxy materials it intends to distribute in connection with its 2022 Annual Meeting of Stockholders.

The Proponent has agreed to withdraw this Proposal. Attached hereto as Exhibit A is a withdrawal communication dated January 21, 2022 (the "Withdrawal Communication") from the Proponent to the Company and the Staff of the Division of Corporate Finance in which the Proponent voluntarily agrees to withdraw the Proposal. In reliance on the Withdrawal Communication, we hereby withdraw the No-Action Request.

If you should have any questions or need additional information please do not hesitate to contact me at lturano@paulweiss.com or (212) 373-3659.

Sincerely,

Laura Turano, Esq.

cc (by email and/or overnight mail): James McRitchie (c/o John Chevedden), Jonathan Dorfman

Attachments

Exhibit A

Withdrawal Communication

From: [James McRitchie](#)
To: [SEC - Office of Chief Counsel](#)
Cc: [Turano, Laura C](#); [Mi, Frances](#); [Jonathan Dorfman](#); [John Chevedden](#); [Yang, Alexia](#)
Subject: Re: Teladoc Health, Inc. - No-Action Request
Date: Friday, January 21, 2022 6:19:05 PM
Attachments: [Teladoc - No-Action Letter.pdf](#)

I withdraw the proposal, so no no-action decision needed. The company didn't provide an 8-K, preliminary proxy, or any other evidence of filing their proposed language with the SEC. I will take the no-action request as a public announcement of their commitment to do so, so hereby withdraw my proposal. Let's not waste any SEC Staff time on this.

James McRitchie
Shareholder Advocate
Corporate Governance

[REDACTED]

[REDACTED]

On Jan 21, 2022, at 2:10 PM, Yang, Alexia <ayang@paulweiss.com> wrote:

Good afternoon,

On behalf of Teladoc Health, Inc., please find attached a no-action request and its attachments in accordance with Section C of Staff Legal Bulletin No. 14D (Nov. 7, 2008). In accordance with Rule 14a-8(j), we are simultaneously sending a copy of this letter and its attachments to the stockholder proponent and his designated agent.

Best,

Alexia

Alexia Yang | Associate

Paul, Weiss, Rifkind, Wharton & Garrison LLP

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