

**AMENDED AND RESTATED BYLAWS OF  
VIAVI SOLUTIONS INC.**

**a Delaware corporation**

**(as of February 12, 2024)**

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## **ARTICLE I**

### **Offices**

#### Section 1. Registered Office.

The registered office of the corporation in the State of Delaware shall be in the City of Dover, County of Kent.

#### Section 2. Other Offices.

The corporation shall also have and maintain an office or principal place of business at 1445 South Spectrum Blvd, Suite 102 , Chandler, Arizona 85286, and may also have offices at such other places, both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require.

## **ARTICLE II**

### **Stockholders' Meetings**

#### Section 1. Place of Meetings.

(a) Meetings of stockholders may be held at such place, either within or without this State, as may be designated by or in the manner provided in these Bylaws or, if not so designated, as determined by the Board of Directors as permitted by the Delaware General Corporation Law. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as authorized by paragraph (b) of this Section 1.

(b) If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication:

(i) Participate in a meeting of stockholders; and

(ii) Be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (A) the corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder, (B) the corporation shall implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (C) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the corporation.

## Section 2. Annual Meetings.

If required by applicable law, the annual meetings of the stockholders of the corporation for the purpose of election of directors and for such other business as may lawfully come before it shall be held on such date and at such time as may be designated from time to time by the Board of Directors.

## Section 3. Special Meetings.

Special Meetings of the stockholders of the corporation may be called, for any purpose or purposes, by the Chairman of the Board or the Chief Executive Officer or the Board of Directors at any time, subject to the rights of the holders of any stock having a preference over the common stock as to dividends or liquidation. Stockholders are not permitted to call a special meeting or to require the Board of Directors to call a special meeting of stockholders. Business transacted at any special meeting of stockholders shall be confined to the purpose or purposes stated in the notice of meeting.

## Section 4. Notice of Meetings.

(a) Except as otherwise provided by law or the Certificate of Incorporation, notice of each meeting of stockholders shall be given in accordance with applicable law, specifying the place, if any, date and hour and purpose or purposes of the meeting, the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, and the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining stockholders entitled to notice of the meeting), shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote thereat as of the record date for determining the stockholders entitled to notice of the meeting, directed to his address as it appears upon the books of the corporation; except that where the matter to be acted on is a merger or consolidation of the corporation or a sale, lease or exchange of all or substantially all of its assets, such notice shall be given not less than twenty nor more than sixty days prior to such meeting.

(b) If at any meeting action is proposed to be taken which, if taken, would entitle stockholders fulfilling the requirements of Section 262(d) of the Delaware General Corporation Law to an appraisal of the fair value of their shares, the notice of such meeting shall contain a statement of that purpose and to that effect and shall be accompanied by a copy of that statutory section.

(c) Notwithstanding Section 5 of these Bylaws, the chairman of the meeting shall have the power to adjourn the meeting to another time, date and place (if any) regardless of whether a quorum is present, at any time and for any reason. Any meeting of stockholders, annual or special, may be adjourned from time to time (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), and notice need not be given of such adjourned meeting if the time, place, if any, thereof, and the means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting, are announced at the meeting at which the

adjournment is taken, or are provided in any other manner permitted by the Delaware General Corporation Law unless the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If, after the adjournment, a new record date for determination of stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix as the record date for determining stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at the adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record as of the record date so fixed for notice of such adjourned meeting. To the fullest extent permitted by applicable law, the Board of Directors may postpone, reschedule or cancel at any time and for any reason any previously scheduled special or annual meeting of the stockholders before it (or any adjournment) is to be held, regardless of whether any notice or public disclosure with respect to any such meeting (or adjournment) has been sent or made pursuant to Section 4 hereof or otherwise, in which case notice shall be provided to the stockholders of the new date, time and place, if any, of the meeting as provided in Section 4 above.

(d) Notice of the time, place and purpose of any meeting of stockholders may be waived in writing, either before or after such meeting, and, to the extent permitted by law, will be waived by any stockholder by his attendance thereat, in person or by proxy. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

(e) Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the corporation under any provision of this chapter, 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 (i) the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent, and (ii) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Notice given pursuant to this subparagraph (e) shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice; (2) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice; (3) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and (4) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the secretary or an assistant secretary or of the transfer agent or other agent of the corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein. For purposes of these Bylaws, "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.

## Section 5. Quorum.

At all meetings of stockholders, except where otherwise provided by law, the Certificate of Incorporation, or these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. Shares, the voting of which at said meeting have been enjoined, or which for any reason cannot be lawfully voted at such meeting, shall not be counted to determine a quorum at said meeting. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. At such adjourned meeting at which a quorum is present or represented any business may be transacted which might have been transacted at the original meeting. To the fullest extent permitted by law, if a quorum is present at the original meeting, it shall also be deemed present at the adjourned meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, including, to the fullest extent permitted by law, at any adjournment thereof (unless a new record date is fixed for the adjourned meeting).

## Section 6. Action at Meeting.

(a) At any meeting of stockholders for the election of one or more directors at which a quorum is present, each director shall be elected by the vote of a majority of the votes cast with respect to the director, provided that if the number of nominees exceeds the number of directors to be elected, the directors shall be elected by the vote of a plurality of the votes cast by the stockholders entitled to vote at the election. For purposes of this Section 6, a majority of the votes cast means that the number of shares voted “for” a director exceeds the number of votes cast “against” that director. If a director then serving on the Board of Directors does not receive the required majority, the director shall tender his resignation to the Board of Directors. Within ninety (90) days after the date of the certification of the election results, the Governance Committee or other committee that may be designated by the Board of Directors will make a recommendation to the Board of Directors on whether to accept or reject the resignation, or whether other action should be taken and the Board of Directors will act on such committee’s recommendation.

(b) Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all other matters shall be determined by a majority in voting power of the shares present in person or represented by proxy and entitled to vote on the matter, provided that a quorum is present.

## Section 7. Voting Rights.

(a) Except as otherwise provided by law, only persons in whose names shares entitled to vote stand on the stock records of the corporation on the record date for determining the stockholders entitled to vote at said meeting shall be entitled to vote at such meeting. Shares standing in the names of two or more persons shall be voted or represented in accordance with the determination of the majority of such persons, or, if only one of such persons is present in person or represented by proxy, such person shall have the right to vote such shares and such shares shall be deemed to be represented for the purpose of determining a quorum.

(b) Every person entitled to vote or to execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary of the corporation at or before the meeting at which it is to be used. Said proxy so appointed need not be a stockholder. No proxy shall be voted on after three (3) years from its date unless the proxy provides for a longer period. Unless and until voted, every proxy shall be revocable at the pleasure of the person who executed it or of his legal representatives or assigns, except in those cases where an irrevocable proxy permitted by statute has been given.

(c) Each stockholder may authorize another person or persons to act for him as proxy pursuant to subsection (b) of this Section, through any manner permitted by Section 212(c) of the Delaware General Corporation Law.

(d) Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for exclusive use by the Board of Directors.

#### Section 8. Voting Procedures and Inspectors of Elections.

(a) The corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his ability.

(b) The inspectors shall (i) ascertain the number of shares outstanding and the voting power of each, (ii) determine the shares represented at a meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors.

(c) 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. No ballot, proxies or votes, nor any revocations thereof or changes thereto, shall be accepted by the Inspectors after the closing of the polls unless the Court of Chancery upon application by a stockholder shall determine otherwise.

(d) All voting, including on the election of directors, but excepting where otherwise required by law, may be by a voice vote; provided, however, that upon demand therefor by a stockholder entitled to vote or the stockholder's proxy, a vote by ballot shall be taken. Each ballot shall state the name of the stockholder or proxy voting and such other information as may be required under the procedure established for the meeting. In determining the validity and counting of proxies and ballots, the inspectors shall be limited to an examination of the proxies, any envelopes

submitted with those proxies, any information provided in accordance with Section 212(c)(2) of the Delaware General Corporation Law, ballots and the regular books and records of the corporation, except that the inspectors may consider other reliable information for the limited purpose of reconciling proxies and ballots submitted by or on behalf of banks, brokers, their nominees or similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the stockholder holds of record. If the inspectors consider other reliable information for the limited purpose permitted herein, the inspectors at the time they make their certification pursuant to subsection (b)(v) of this Section shall specify the precise information considered by them including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained and the basis for the inspectors' belief that such information is accurate and reliable.

#### Section 9. List of Stockholders.

The Corporation shall prepare and make, no later than the tenth (10<sup>th</sup>) day before each meeting of stockholders, a complete list of the stockholders entitled to vote at said 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 (10<sup>th</sup>) day before the meeting date), arranged in alphabetical order, showing the address of and the number of shares registered in the name of each stockholder. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of ten (10) days ending the day before the meeting date (a) on a reasonably accessible electronic network as permitted by applicable law (provided that the information required to gain access to the list is provided with the notice of the meeting), or (b) during ordinary business hours, at the principal place of executive offices of the corporation. 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. Except as otherwise provided by law, the stock ledger of the corporation shall be the only evidence as to the identity of the stockholders entitled to examine the list of stockholders required by this Section 9 or to vote in person or by proxy at any meeting. Notwithstanding the foregoing, the corporation may maintain and authorize examination of the list of stockholders required by this Section 9 in any manner expressly permitted by the Delaware General Corporation Law at the time.

#### Section 10. Stockholder Proposals at Annual Meetings.

(a) At an annual meeting of the stockholders, only such business (other than matters properly included in the corporation's notice of meeting and proxy statement under Rule 14a-8 promulgated under Securities Exchange Act of 1934, as amended (the "Exchange Act")) shall be conducted as shall have been properly brought before the meeting in accordance with this Section 10. The proposal of business to be considered by stockholders may be brought before an annual meeting of stockholders only: (i) pursuant to the corporation's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors (or a duly authorized committee thereof), or (iii) by a stockholder of the corporation who was a stockholder of record at the time of the giving of the notice required by this Section 10 (or, in the case of a nomination,

Section 11 of this Article II), who is entitled to vote at the meeting and who complies with the applicable procedures and requirements of these Bylaws (the "Record Stockholder"). In addition to any other applicable requirements for business to be properly brought before an annual meeting by a Record Stockholder, the Record Stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a Record Stockholder's notice must be both (x) delivered to or mailed and received at the principal executive offices of the corporation and (y) emailed to investor.relations@viavisolutions.com not later than 5:00 p.m. Eastern Time on the 90<sup>th</sup> day nor earlier than 5:00 p.m. Eastern Time on the 120<sup>th</sup> day prior to the first anniversary of the date of the preceding year's annual meeting; provided, however, that if no annual meeting was held in the previous year or the date of the annual meeting is advanced by more than 30 days or delayed (other than as a result of adjournment or postponement referred to in the final sentence of this paragraph (a)) by more than 60 days from the first anniversary of the previous year's annual meeting, notice by the Record Stockholder to be timely must be so received not earlier than 5:00 p.m. Eastern Time on the 120<sup>th</sup> day prior to such annual meeting and not later than 5:00 p.m. Eastern Time on the later of the 90<sup>th</sup> day prior to such annual meeting or the 10<sup>th</sup> day following the date on which such public announcement of the date of such meeting was made. In no event shall an adjournment or postponement of an annual meeting for which notice has been given or for which a public announcement of the date of such meeting has been made the corporation, commence a new time period (or extend any time period) for providing the Record Stockholder's notice for purposes of this Section 10.

(b) A Record Stockholder's notice to the Secretary for purposes of this Section 10 shall include:

(i) a brief description of the business desired to be brought before the meeting and the text of the proposal or business, including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend the Bylaws of the corporation, the language of the proposed amendment,

(ii) the name and address of the Record Stockholder and any other Associated Person, as they appear on the corporation's books and records in the case of the Record Stockholder,

(iii) a representation that the Record Stockholder is a holder of record of stock of the corporation entitled to vote at the meeting on the date of such notice and that the Record Stockholder (or a qualified representative thereof) intends to appear at the meeting to propose the business specified in the notice,

(iv) any material interest of the Record Stockholder and any other Associated Person in such business,

(v) the following information, which shall be supplemented in writing by the Record Stockholder not later than 10 days after the record date for voting at the meeting to disclose such information as of such record date: (A) the class or series and number of shares of the corporation that are owned beneficially and of record by the Record Stockholder and any other Associated Person; (B) any option, warrant, convertible security, stock appreciation right, or similar right with an exercise or conversion privilege or a settlement payment or mechanism at

a price related to any class or series of shares of the corporation or with a value derived in whole or in part from the value of any class or series of shares of the corporation, any derivative or synthetic arrangement having the characteristics of a long position in any class or series of shares of the corporation, or any contract, derivative, swap or other transaction or series of transactions designed to produce economic benefits and risks that correspond substantially to the ownership of any class or series of shares of the corporation, including due to the fact that the value of such contract, derivative, swap or other transaction or series of transactions is determined by reference to the price, value or volatility of any class or series of shares of the corporation, whether or not such instrument, contract or right shall be subject to settlement in the underlying class or series of shares of the corporation, through the delivery of cash or other property, or otherwise, and without regard to whether the Record Stockholder or any other Associated Person may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right (a "Derivative Instrument") directly or indirectly owned beneficially by such Record Stockholder or other Associated Person, and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of the corporation; (C) any proxy (other than a revocable proxy given in response to a proxy solicitation made to 10 or more persons), contract, arrangement, understanding, or relationship pursuant to which such Record Stockholder or other Associated Person has a right to vote any shares of any security of the corporation; (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called "stock borrowing" agreement or arrangement, engaged in, directly or indirectly, by such Record Stockholder or other Associated Person, the purpose or effect of which is to mitigate loss to, reduce the economic risk (of ownership or otherwise) of any class or series of the shares of the corporation by, manage the risk of share price changes for, or increase or decrease the voting power of, such Record Stockholder or other Associated Person with respect to any class or series of the shares of the corporation, or which provides, directly or indirectly, the opportunity to profit or share in any profit derived from any decrease in the price or value of any class or series of the shares of the corporation ("Short Interests"); (E) any rights to dividends on the shares of the corporation owned beneficially by such Record Stockholder or other Associated Person that are separated or separable from the underlying shares of the corporation; (F) any proportionate interest in shares of the corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such Record Stockholder or other Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner; (G) any performance-related fees (other than an asset-based fee) to which such Record Stockholder or other Associated Person is entitled based on any increase or decrease in the value of shares of the corporation or Derivative Instruments, if any, as of the date of such notice, including, without limitation, any such interests held by members of such Record Stockholder's or other Associated Person's; (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor held by such Record Stockholder or other Associated Person; (I) any direct or indirect interest of such Record Stockholder or other Associated Person in any contract with the corporation, any subsidiary of the corporation or any principal competitor (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement); (J) any other information relating to such Record Stockholder or other Associated Person, if any, that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in a contested election pursuant to Section 14 of the Exchange

Act; (K) a representation (1) as to whether the Record Stockholder or any Associated Person intends (or is part of a group that intends) to deliver a proxy statement and form of proxy to the holders of at least the percentage of the corporation's voting shares required under applicable law to carry the proposal, and (2) that such Record Stockholder will (x) notify the corporation if such Record Stockholder or Associated Person (or any group of which such person is a part) no longer intends to solicit proxies in accordance with the representation given pursuant to foregoing clause (K)(1), which notice shall be delivered in writing to the Secretary at the principal executive offices of the corporation no later than 2 business days after the occurrence of such change in intent and (y) promptly (and in any event no more than 2 business days) after the Record Stockholder or Associated Person (or any group of which such person is a part) has solicited the holders of the percentage of voting shares required by foregoing clause (K)(1), provide the corporation with reasonable evidence, which may take the form of a statement and documentation from a proxy solicitor, demonstrating that the necessary steps have been taken to deliver a proxy statement and form of proxy to the holders of the percentage of voting shares required by foregoing clause (K)(1); and (L) a description of all agreements, arrangements and understandings between or among any the Record Stockholder or any Associated Person, on the one hand, and any other person or persons, on the other hand, (including their names) in connection with the proposal, including, without limitation, any agreements, arrangements or understandings required to be disclosed pursuant to Item 5 or Item 6 of 1934 Act Schedule 13D, regardless of whether the requirement to file a Schedule 13D is applicable.

(c) Notwithstanding anything in the Bylaws to the contrary, no business shall be conducted at an annual meeting except for business brought in accordance with the procedures set forth in this Section 10, and no person shall be eligible for election or re-election as a director unless nominated in accordance with the provisions of Section 11 of this Article II and the applicable provisions of this Section 10. Except as otherwise required by law or these Bylaws, the chairman of an annual meeting shall, if the facts warrant, have the power and duty to determine whether business or a nomination was not properly brought before the meeting in compliance with the applicable provisions of this Section 10 and Section 11 of this Article II (including if the Record Stockholder, any Associated Person or any Stockholder nominee acted contrary to any representation or agreement required by this Section 10 or Section 11 of this Article II), and if he should so determine, he shall so declare to the meeting and such business or nomination shall not be presented for stockholder action at the meeting and shall be disregarded (and any such Stockholder Nominee shall be disqualified from standing for election or re-election), notwithstanding that proxies in respect of such vote may have been received by the corporation. If a Record Stockholder or Associated Person has provided notice pursuant to Rule 14a-19(b) promulgated under the Exchange Act and such Record Holder or Associated Person subsequently fails to comply with the requirements of Rule 14a-19(a)(2), then the nomination of each Stockholder Nominee proposed by the Record Stockholder shall be disregarded (and any such Stockholder Nominee shall be disqualified from standing for election or re-election), notwithstanding that proxies in respect of the election of any such Stockholder Nominee may have been received by the corporation.

(d) Notwithstanding anything in these Bylaws to the contrary, a stockholder must also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder (including, without limitation, Rule 14a-19) with respect to the matters set forth in this Section 10 and Section 11 of this Article II, as applicable, and any failure to comply

therewith shall be deemed a failure to comply with these Bylaws. Nothing in this Section 10 or Section 11 of this Article II shall be deemed to affect any rights of (i) stockholders to request inclusion of proposals in the corporation's proxy statement pursuant to Rule 14a-8 promulgated under the Exchange Act or (ii) the holders of any series of preferred stock to elect directors or propose business pursuant to any applicable provisions of the Certificate of Incorporation (including any certificate of designation).

(e) For purposes of this Section 10 and Section 11 of this Article II:

(i) "affiliate" shall have the meanings set forth in Rule 405 under the Securities Act of 1933, as amended.

(ii) "Associated Person" shall mean (A) the beneficial owner, if any, on whose behalf the proposal or nomination is being made, (B) any affiliate who controls either of the Record Stockholder or such beneficial owner, directly or indirectly, and (C) any person acting in concert with any of the foregoing,

(iii) persons shall be deemed to be "acting in concert" if such persons have an agreement, arrangement or understanding regarding the voting or disposition of shares of stock of the corporation,

(iv) "principal competitor" means an entity that the Board of Directors has determined, in good faith, constitutes a principal competitor of the corporation, a list of which entities shall be maintained by the corporation and provided to a Record Stockholder within 5 business days following a request therefor,

(v) "public announcement" shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act, and

(vi) to be considered a "qualified representative" of a Record Stockholder, a person must be a duly authorized officer, trustee, manager or partner of such Record Stockholder or must be authorized by a writing executed by such Record Stockholder or an electronic transmission delivered by such Record Stockholder to act for such as proxy therefor 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, to the Secretary of the corporation at the principal executive offices of the corporation at least 5 business days in advance of the meeting of stockholders.

Section 11. Nominations of Persons for Election to the Board of Directors.

(a) Nominations of persons for election to the Board of Directors of the corporation may be made at an annual meeting of stockholders or at a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting: (A) by or at the direction of the Board of Directors (or an authorized committee thereof) (each such nominee, a "Board Nominee") or (B) by any Record Stockholder (each such nominee, a "Stockholder Nominee"). Such nominations, other than a Board Nominee, shall be made pursuant to timely

notice in writing to the Secretary of the corporation. To be timely, a Record Stockholder's notice shall be both (x) delivered to or mailed and received at the principal executive offices of the corporation and (y) emailed to investor.relations@viavisolutions.com, (1) in the case of an annual meeting of stockholders, not later than 5:00 p.m. Eastern Time on the 90<sup>th</sup> day nor earlier than 5:00 p.m. Eastern Time on the 120<sup>th</sup> day prior to the first anniversary of the date of the preceding year's annual meeting; provided, however, that if no annual meeting was held in the previous year or the date of the annual meeting is advanced by more than 30 days or delayed (other than as a result of adjournment or postponement referred to in the final sentence of this paragraph (a)) by more than 60 days from the first anniversary of the previous year's annual meeting, notice by the Record Stockholder to be timely must be so received not earlier than 5:00 p.m. Eastern Time on the 120<sup>th</sup> day prior to such annual meeting and later than 5:00 p.m. Eastern Time on the later of 90<sup>th</sup> day prior to such annual meeting or the 10<sup>th</sup> day following the date on which such public announcement of the date of such meeting was made, and (2) in the case of a special meeting called by the corporation for the purpose of electing one or more directors, not earlier than 5:00 p.m. Eastern Time on the 120<sup>th</sup> day prior to such special meeting nor later than 5:00 p.m. Eastern Time on the later of the 90<sup>th</sup> day prior to such special meeting or the 10<sup>th</sup> day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall an adjournment or postponement (or the public announcement thereof) of an annual meeting for which notice has been given or for which a public announcement of the date of such meeting has been made the corporation or of a special meeting, commence a new time period (or extend any time period) for providing the Record Stockholder's notice for purposes of this Section 11.

(b) A Record Stockholder's notice to the Secretary for purposes of this Section 11 shall include:

(i) the name and address of the Record Stockholder and any other Associated Person, as they appear on the corporation's books and records in the case of the Record Stockholder,

(ii) a representation that the Record Stockholder is a holder of record of stock of the corporation entitled to vote at the meeting on the date of such notice and that the Record Stockholder (or a qualified representative thereof) intends to appear at the meeting to nominate the Stockholder Nominee(s) proposed by the Record Stockholder,

(iii) with respect to the Record Stockholder, any Associated Person and each Stockholder Nominee proposed by the Record Stockholder, the following information, which shall be supplemented in writing by the Record Stockholder not later than 10 days after the record date for voting at the meeting to disclose such information as of such record date: (A) the information described in clauses (A) through (J) of Section 10(b)(v) and (B) a description of all agreements, arrangements and understandings between or among any the Record Stockholder, any Associated Person or any Stockholder Nominee, on the one hand, and any other person or persons, on the other hand, (including their names) in connection with such nomination(s), including, without limitation, any agreements, arrangements or understandings required to be disclosed pursuant to Item 5 or Item 6 of 1934 Act Schedule 13D, regardless of whether the requirement to file a Schedule 13D is applicable;

(iv) a representation (A) (1) confirming that the Record Stockholder or an Associated Person will (or is part of a group that will) solicit proxies in support of any Stockholder Nominee proposed by the Record Stockholder in accordance with Rule 14a-19 promulgated under the Exchange Act and/or (2) as to whether the Record Stockholder or an Associated Person intends (or is part of a group that intends) to otherwise solicit proxies in support of any Stockholder Nominee, and (B) that, if such Record Stockholder or an Associated Person provides notice to the corporation pursuant to Rule 14a-19(b) promulgated under the Exchange Act, such Record Stockholder will (1) notify the corporation if such Record Stockholder or Associated Person (or any group of which such person is a part) no longer intends to solicit proxies in accordance with Rule 14a-19(a)(3) promulgated under the Exchange Act, which notice shall be delivered in writing to the Secretary at the principal executive offices of the corporation no later than 2 business days after the occurrence of such change in intent and (2) promptly (and in any event no more than 2 business days) after the Record Stockholder or Associated Person (or any group of which such person is a part) has solicited proxies in accordance with Rule 14a-19(a)(3), provide the corporation with reasonable evidence, which may take the form of a statement and documentation from a proxy solicitor, demonstrating that the necessary steps have been taken to solicit holders of the corporation's stock in accordance with Rule 14a-19(a)(3) promulgated under the Exchange Act; and

(v) with respect to each Stockholder Nominee proposed by the Record Stockholder, the following information, which shall be supplemented in writing by the Record Stockholder not later than 10 days after the record date for voting at the meeting to disclose such information as of such record date, (A) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past 2 years and any other material relationships between or among such Record Stockholder or any Associated Person, on the one hand, and each proposed Stockholder Nominee, on the other hand, that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if such Record Stockholder or Associated Person were the "registrant" for purposes of such rule and the Stockholder Nominee were a director or executive officer of such registrant; (B) each Stockholder Nominee's consent and agreement to (1) serve as a director of the corporation if so elected, (2) be named as a nominee in a proxy statement and form of proxy relating to the meeting at which directors are to be elected, (3) to serving a full term as a director of the corporation if elected, and (4) to tender such person's resignation as a director if and when required by Section 6(a) of this Article II; (C) whether such person meets the independence requirements of any stock exchange applicable to the corporation and the Policies (defined below); and (D) the questionnaire, agreement and other information required by paragraph (c) of this Section 11.

(c) To be eligible for election or re-election as a director, each Stockholder Nominee and Board Nominee shall provide to the corporation, in the case of a Board nominee, within two weeks of receipt of the Secretary's written request therefor, (i) a completed copy of the corporation's form of director's questionnaire, which questionnaire shall be provided by the Secretary within 5 business days following a written request therefor by a Record Stockholder; (ii) a signed agreement to comply with the corporation's corporate governance, conflict of interest, confidentiality, and other policies and guidelines applicable to the corporation's directors, which shall be provided by the Secretary within 5 business days following a written request therefor by a Record Stockholder (together, the "Policies"), and (iii) a reasonable written

disclosure of (A) any agreement or understanding as to how he or she will vote on any matter and (B) any direct or indirect compensatory, payment or other financial agreement, arrangement or understanding with any person or entity other than the corporation, including, without limitation, any agreement, arrangement or understanding with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a nominee or as a director. The Secretary of the corporation may also request in writing that a Stockholder Nominee or Board Nominee report entering into any of the items listed in clauses (iii)(A) and (B) of the preceding sentence at any time during which such person is a nominee and during such person's service as a director.

(d) The corporation may require any Record Holder, Associated Person or Stockholder Nominee to deliver to the Secretary at the principal executive offices of the corporation, within five (5) business days of any such request, such other information (i) as it may reasonably require to determine the eligibility of such Stockholder Nominee to serve as an "independent director" or "audit committee financial expert" under applicable law, securities exchange rule or regulation or the Policies, or (ii) that the Board of Directors determines, in good faith, could be material to a reasonable stockholder's understanding of the background, qualifications, experience, or independence, or lack thereof, of such Stockholder Nominee.

#### Section 12. Action Without 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.

### **ARTICLE III**

#### **Directors**

##### Section 1. Number and Term of Office.

The number of directors which shall constitute the whole of the Board of Directors shall initially be seven (7) and, thereafter, shall be fixed from time to time exclusively by the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board for adoption). Elected directors shall hold office until the expiration of the term for which elected and until their successors shall be duly elected and qualified. Directors need not be stockholders. If, for any cause, the Board of Directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

##### Section 2. Powers.

The powers of the corporation shall be exercised, its business conducted and its property controlled by or under the direction of the Board of Directors.

### Section 3. Vacancies.

Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, and each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant, and until his successor shall have been duly elected and qualified. A vacancy in the Board of Directors shall be deemed to exist under this Section in the case of the death, removal or resignation of any director, or if the stockholders fail at any meeting of stockholders at which directors are to be elected (including any meeting referred to in Section 4 below) to elect the number of directors then constituting the whole Board.

### Section 4. Resignations and Removals.

(a) Any director may resign at any time by delivering his written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board, 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 for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.

(b) At a special meeting of stockholders called for the purpose in the manner hereinabove provided, the Board of Directors, or any individual director, may be removed from office, with or without cause, and a new director or directors elected by a vote of stockholders holding a majority of the outstanding shares entitled to vote at an election of directors.

### Section 5. Meetings.

(a) The annual meeting of the Board of Directors shall be held immediately after the annual stockholders' meeting and at the place where such meeting is held or at the place announced by the Chairman at such meeting. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

(b) Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the office of the corporation required to be maintained pursuant to Section 2 of Article I hereof. Regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolutions of the Board of Directors or the written consent of all directors.

(c) Special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board or, if there is no Chairman of the Board, by the President, or by any of the directors.

(d) Written notice of the time and place of all regular and special meetings of the Board of Directors shall be delivered personally to each director or sent by telegram or facsimile transmission at least 48 hours before the start of the meeting, or sent by first class mail at least 120 hours before the start of the meeting. Notice of any meeting may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat.

#### Section 6. Quorum and Voting.

(a) A quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 1 of Article III of these Bylaws, but not less than one; provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

(b) At each meeting of the Board at which a quorum is present all questions and business shall be determined by a vote of a majority of the directors present, unless a different vote be required by law, the Certificate of Incorporation, or these Bylaws.

(c) Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of conference telephone or similar communication equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

(d) The transactions of any meeting of the Board of Directors, or any committee thereof, however called or noticed, or wherever held, shall be as valid as though had at a meeting duly held after regular call and notice, if a quorum be present and if, either before or after the meeting, each of the directors not present shall sign a written waiver of notice, or a consent to holding such meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

#### Section 7. Action Without 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 of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or of such committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board or committee.

#### Section 8. Fees and Compensation.

Directors and members of committees may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by resolution of the Board of Directors.

## Section 9. Committees.

(a) **Executive Committee:** The Board of Directors may, by resolution passed by a majority of the whole Board, appoint an Executive Committee of not less than one member, each of whom shall be a director. The Executive Committee, to the extent permitted by law, shall have and may exercise when the Board of Directors is not in session all powers of the Board in the management of the business and affairs of the corporation, including, without limitation, the power and authority to declare a dividend or to authorize the issuance of stock, except such committee shall not have the power or authority to amend the Certificate of Incorporation, to adopt an agreement or merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

(b) **Other Committees:** The Board of Directors may, by resolution passed by a majority of the whole Board, from time to time appoint such other committees as may be permitted by law. Such other committees appointed by the Board of Directors shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committee, but in no event shall any such committee have the powers denied to the Executive Committee in these Bylaws.

(c) **Term:** The members of all committees of the Board of Directors shall serve a term coexistent with that of the Board of Directors which shall have appointed such committee. The Board, subject to the provisions of subsections (a) or (b) of this Section 9, may at any time increase or decrease the number of members of a committee or terminate the existence of a committee; provided, that no committee shall consist of less than one member. The membership of a committee member shall terminate on the date of his death or voluntary resignation, but the Board may at any time for any reason remove any individual committee member and the Board may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

(d) **Meetings:** Unless the Board of Directors shall otherwise provide, regular meetings of the Executive Committee or any other committee appointed pursuant to this Section 9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter; special meetings of any such committee may be held at the principal office of the corporation required to be maintained pursuant to Section 2 of Article I hereof; or at any place which has been designated from time to time by resolution of such committee or by written consent of all members thereof, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written

notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time after the meeting and will be waived by any director by attendance thereat. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

## **ARTICLE IV**

### **Officers**

#### **Section 1. Officers Designated.**

The officers of the corporation shall be a Chairman of the Board of Directors and a President, each of whom shall be a member of the Board of Directors, and one or more Vice-Presidents, a Secretary, and a Treasurer. The order of the seniority of the Vice Presidents shall be in the order of their nomination, unless otherwise determined by the Board of Directors. The Board of Directors or the Chairman of the Board or the President may also appoint one or more assistant secretaries, assistant treasurers, and such other officers and agents with such powers and duties as it or he shall deem necessary. The Board of Directors may assign such additional titles to one or more of the officers as they shall deem appropriate. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

#### **Section 2. Tenure and Duties of Officers.**

(a) **General:** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Nothing in these Bylaws shall be construed as creating any kind of contractual right to employment with the corporation.

(b) **Duties of the Chairman of the Board of Directors:** The Chairman of the Board of Directors (if there be such an officer appointed) shall preside at all meetings of the shareholders and the Board of Directors. The Chairman of the Board of Directors shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(c) **Duties of President:** The President shall be the chief executive officer of the corporation (unless the Board of Directors shall designate otherwise) and shall preside at all meetings of the shareholders and at all meetings of the Board of Directors, unless the Chairman of the Board of Directors has been appointed and is present. The President shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

(d) **Duties of Vice-Presidents:** The Vice-Presidents, in the order of their seniority, may assume and perform the duties of the President in the absence or disability of the President or whenever the office of the President is vacant. The Vice-President shall perform such other

duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(e) Duties of Secretary: The Secretary shall attend all meetings of the shareholders and of the Board of Directors and any committee thereof, and shall record all acts and proceedings thereof in the minute book of the corporation. The Secretary shall give notice, in conformity with these Bylaws, of all meetings of the shareholders, and of all meetings of the Board of Directors and any committee thereof requiring notice. The Secretary shall perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

(f) Duties of Treasurer: The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner, and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform all other duties commonly incident to his office and shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. The President may direct any Assistant Treasurer to assume and perform the duties of the Treasurer in the absence or disability of the Treasurer, and each Assistant Treasurer shall perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time. At the election of the Board of Directors, the duties of Treasurer shall be performed by a Vice President designated by the Board of Directors to perform financial functions.

## **ARTICLE V**

### **Execution of Corporate Instruments, and Voting of Securities Owned by the Corporation**

#### Section 1. Execution of Corporate Instruments.

(a) The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute any corporate instrument or document, or to sign the corporate name without limitation, except where otherwise provided by law, and such execution or signature shall be binding upon the corporation.

(b) Unless otherwise specifically determined by the Board of Directors or otherwise required by law, formal contracts of the corporation, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board (if there be such an officer appointed) or by the President; such documents may also be executed by any Vice-President and by the Secretary or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not

requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

(c) All checks and drafts drawn on banks or other depositaries on funds to the credit of the corporation, or in special accounts of the corporation, shall be signed by such person or persons as the Board of Directors shall authorize so to do.

#### Section 2. Voting of Securities Owned by Corporation.

All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors or, in the absence of such authorization, by the Chairman of the Board (if there be such an officer appointed), or by the President, or by any Vice-President.

### **ARTICLE VI**

#### **Shares of Stock**

##### Section 1. Form and Execution of Certificates.

The shares of capital stock of the corporation shall be represented by a certificate, unless and until the Board of Directors of the corporation adopts a resolution permitting shares to be uncertificated. Notwithstanding the adoption of any such resolution providing for uncertificated shares, every holder of capital stock of the corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate for shares of capital stock of the corporation signed by, or in the name of the corporation by, the Chairman of the Board (if there be such an officer appointed), or by the President or any Vice-President and by the Treasurer or Assistant Treasurer or the Secretary or Assistant Secretary, certifying the number of shares owned by him in the corporation. 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 shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue. Certificates for the shares of stock of the corporation shall be in such form as is consistent with the Certificate of Incorporation and applicable law. If the corporation shall be authorized to issue more than one class of stock or more than one series of any class, the powers, designations, preferences and 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 or otherwise noted in the case of an uncertificated share which the corporation shall issue to represent such class or series of stock or otherwise noted in the case of an uncertificated share, provided that, except as otherwise provided in section 202 of the Delaware General Corporation Law, in lieu of the foregoing requirements, there may be set forth on the face or back of the certificate which 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, designations,

preferences and 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.

## Section 2. Lost Certificates.

The Board of Directors may direct a new certificate or certificates to be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost or destroyed. When authorizing such issue of a new certificate or certificates, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost or destroyed certificate or certificates, or his legal representative, to indemnify the corporation in such manner as it shall require and/or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost or destroyed.

## Section 3. Transfers.

Transfers of stock shall be made on the books of the corporation, and in the case of certificated shares of stock, only by the holder thereof, in person or by attorney duly authorized, and upon the surrender of a certificate or certificates, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the corporation or the transfer agent thereof. No transfer of stock shall be valid as against the corporation for any purpose until it shall have been entered in the stock records of the corporation by an entry showing from and to whom transferred.

## Section 4. Fixing Record Dates.

(a) In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten (10) days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at 5:00 p.m. Eastern Time on the day next preceding the day on which notice is given, or, if notice is waived, 5:00 p.m. Eastern Time on the day next preceding the date on which the meeting is

held. A determination of stockholders of record entitled notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting, and in such case shall also fix as the record date for stockholder entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at 5:00 p.m. Eastern Time on the day on which the Board of Directors adopts the resolution relating thereto.

#### Section 5. Registered Stockholders.

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

## **ARTICLE VII**

### **Other Securities of the Corporation**

All bonds, debentures and other corporate securities of the corporation, other than stock certificates, may be signed by the Chairman of the Board (if there be such an officer appointed), or the President or any Vice-President or such other person as may be authorized by the Board of Directors and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signature of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation, or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or before the bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose

facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

## **ARTICLE VIII**

### **Corporate Seal**

The corporate seal shall consist of a die bearing the name of the corporation and the state and date of its incorporation. Said seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## **ARTICLE IX**

### **Indemnification of Officers, Directors, Employees and Agents**

#### **Section 1. Right to Indemnification.**

Each person who was or is a party or is threatened to be made a party to or is involved (as a party, witness, or otherwise), in any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (hereinafter a "Proceeding"), by reason of the fact that he, or a person of whom he is the legal representative, is or was a director, officer, employee, or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee, or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, whether the basis of the Proceeding is alleged action in an official capacity as a director, officer, employee, or agent or in any other capacity while serving as a director, officer, employee, or agent (hereafter an "Agent"), shall be indemnified and held harmless by the corporation to the fullest extent authorized by the Delaware General Corporation Law, as the same exists or may hereafter be amended or interpreted (but, in the case of any such amendment or interpretation, only to the extent that such amendment or interpretation permits the corporation to provide broader indemnification rights than were permitted prior thereto) against all expenses, liability, and loss (including attorneys' fees, judgments, fines, ERISA excise taxes or penalties, and amounts paid or to be paid in settlement, and any interest, assessments, or other charges imposed thereon, and any federal, state, local, or foreign taxes imposed on any Agent as a result of the actual or deemed receipt of any payments under this Article) reasonably incurred or suffered by such person in connection with investigating, defending, being a witness in, or participating in (including on appeal), or preparing for any of the foregoing in, any Proceeding (hereinafter "Expenses"); provided, however, that except as to actions to enforce indemnification rights pursuant to Section 3 of this Article, the corporation shall indemnify any Agent seeking indemnification in connection with a Proceeding (or part thereof) initiated by such person only if the Proceeding (or part thereof) was authorized by the Board of Directors of the corporation. The right to indemnification conferred in this Article shall be a contract right.

#### **Section 2. Authority to Advance Expenses.**

Expenses incurred by an officer or director (acting in his capacity as such) in defending a Proceeding shall be paid by the corporation in advance of the final disposition of such

Proceeding, provided, however, that if required by the Delaware General Corporation Law, as amended, such Expenses shall be advanced only upon delivery to the corporation of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the corporation as authorized in this Article or otherwise. Expenses incurred by other Agents of the corporation (or by the directors or officers not acting in their capacity as such, including service with respect to employee benefit plans) may be advanced upon such terms and conditions as the Board of Directors deems appropriate. Any obligation to reimburse the corporation for Expense advances shall be unsecured and no interest shall be charged thereon.

### Section 3. Right of Claimant to Bring Suit.

If a claim under Section 1 or 2 of this Article is not paid in full by the corporation within 120 days after a written claim has been received by the corporation, the claimant may at any time thereafter bring suit against the corporation to recover the unpaid amount of the claim and, if successful in whole or in part, the claimant shall be entitled to be paid also the expense (including attorneys' fees) of prosecuting such claim. It shall be a defense to any such action (other than an action brought to enforce a claim for expenses incurred in defending a Proceeding in advance of its final disposition where the required undertaking has been tendered to the corporation) that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper under the circumstances because he has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel, or its stockholders) that the claimant had not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

### Section 4. Provisions Nonexclusive.

The rights conferred on any person by this Article shall not be exclusive of any other rights that such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors, or otherwise, both as to action in an official capacity and as to action in another capacity while holding such office. To the extent that any provision of the Certificate, agreement, or vote of the stockholders or disinterested directors is inconsistent with these bylaws, the provision, agreement, or vote shall take precedence.

### Section 5. Authority to Insure.

The corporation may purchase and maintain insurance to protect itself and any Agent against any Expense, whether or not the corporation would have the power to indemnify the Agent against such Expense under applicable law or the provisions of this Article.

Section 6. Survival of Rights.

The rights provided by this Article shall continue as to a person who has ceased to be an Agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

Section 7. Settlement of Claims.

The corporation shall not be liable to indemnify any Agent under this Article (a) for any amounts paid in settlement of any action or claim effected without the corporation's written consent, which consent shall not be unreasonably withheld; or (b) for any judicial award if the corporation was not given a reasonable and timely opportunity, at its expense, to participate in the defense of such action.

Section 8. Effect of Amendment.

Any amendment, repeal, or modification of this Article shall not adversely affect any right or protection of any Agent existing at the time of such amendment, repeal, or modification.

Section 9. Subrogation.

In the event of payment under this Article, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the Agent, who shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

Section 10. No Duplication of Payments.

The corporation shall not be liable under this Article to make any payment in connection with any claim made against the Agent to the extent the Agent has otherwise actually received payment (under any insurance policy, agreement, vote, or otherwise) of the amounts otherwise indemnifiable hereunder.

## **ARTICLE X**

### **Exclusive Forum for Adjudication of Disputes**

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or these Bylaws (in each case, as they may be amended from time to time), or (iv) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery in the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware), in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. Any person or entity purchasing or otherwise acquiring any interest in shares of

capital stock of the corporation shall be deemed to have notice of and consented to the provisions of these Bylaws.

## **ARTICLE XI**

### **Notices**

Whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, the same shall be given either (1) in writing, timely and duly deposited in the United States Mail, postage prepaid, and addressed to his last known post office address as shown by the stock record of the corporation or its transfer agent, or (2) by a means of electronic transmission that satisfies the requirements of Section 4(e) of Article II of these Bylaws, and has been consented to by the stockholder to whom the notice is given. Any notice required to be given to any director may be given by the method hereinabove stated, or by telegram or other means of electronic transmission, except that such notice other than one which is delivered personally, shall be sent to such address or (in the case of facsimile telecommunication) facsimile telephone number as such director shall have filed in writing with the Secretary of the corporation, or, in the absence of such filing, to the last known post office address of such director. If no address of a stockholder or director be known, such notice may be sent to the office of the corporation required to be maintained pursuant to Section 2 of Article I hereof. An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained. All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing and all notices given by telegram or other means of electronic transmission shall be deemed to have been given as at the sending time recorded by the telegraph company or other electronic transmission equipment operator transmitting the same. It shall not be necessary that the same method of giving be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others. The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent him in the manner above provided, shall not be affected or extended in any manner by the failure of such a stockholder or such director to receive such notice. Whenever any notice is required to be given under the provisions of the statutes or of the Certificate of Incorporation, or of these Bylaws, a waiver thereof in writing signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law,

the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

## **ARTICLE XII**

### **Amendments**

These Bylaws may be repealed, altered or amended or new Bylaws adopted by written consent of stockholders, or at any meeting of the stockholders, either annual or special, by the affirmative vote of a majority of the stock entitled to vote at such meeting. The Board of Directors shall also have the authority to repeal, alter or amend these Bylaws or adopt new Bylaws (including, without limitation, the amendment of any Bylaws setting forth the number of directors who shall constitute the whole Board of Directors) by unanimous written consent or at any annual, regular, or special meeting by the affirmative vote of a majority of the whole number of directors, subject to the power of the stockholders to change or repeal such Bylaws and provided that the Board of Directors shall not make or alter any Bylaws fixing the qualifications, classifications, or term of office of directors.