

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

FORM 8-K

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

Date of Report (Date of earliest event reported): May 19, 2022 (May 15, 2022)

EXELA TECHNOLOGIES, INC.
(Exact name of registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation or organization)

001-36788

(Commission File Number)

47-1347291

(I.R.S. Employer
Identification Number)

**2701 E. Grauwylar Rd.
Irving, TX**

(Address of principal executive offices)

75061

(Zip Code)

Company's telephone number, including area code: **(844) 935-2832**

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

Title of Each Class	Trading Symbol	Name of Each Exchange on Which Registered
Common Stock, Par Value \$0.0001 per share	XELA	The Nasdaq Stock Market LLC
6.00% Series B Cumulative Convertible Perpetual Preferred Stock, par value \$0.0001 per share	XELAP	The Nasdaq Stock Market LLC

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

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

Introductory Note

On May 17, 2022, Exela Technologies, Inc. (the “Company”) consummated its previously announced exchange offer (the “Offer”), whereby the Company offered to exchange up to 100,000,000 shares of its outstanding common stock, par value \$0.0001 per share (the “Common Stock”), for its 6.00% Series B Cumulative Convertible Perpetual Preferred Stock (“Series B Preferred Stock”), with each 20 shares of Common Stock being exchangeable in the Offer for one share of Series B Preferred Stock having a liquidation preference of \$25.00 per share of Series B Preferred Stock (an effective price of \$1.25 per share of Common Stock).

Also on May 17, 2022, the Company created a new class of its preferred stock and designated such stock as “Tandem Preferred Stock” and declared a dividend of one share of Tandem Preferred Stock for each share of outstanding Series B Preferred Stock (the “Tandem Stock Dividend”). On all matters submitted to a vote of the stockholders of the Company, the holders of the Tandem Preferred Stock will vote with the holders of the Common Stock as a single class. Each share of Tandem Preferred Stock initially has 20 votes (representing the number of votes of the Common Stock surrendered in exchange for one share of Series B Preferred Stock), which is subject to adjustment for stock splits and similar transaction.

On May 19, 2022, the Company created a new class of its preferred stock and designated such stock as “Special Voting Stock” and entered into a Subscription, Voting and Redemption Agreement (the “Voting Agreement”) related to the issuance, voting and redemption of the Special Voting Stock. Each share of Special Voting Stock is entitled to 20,000 votes per share on certain items to be voted upon at the Company’s 2022 annual meeting of its stockholders (the “Annual Meeting”), as more fully discussed in this Current Report on Form 8-K.

Item 1.01 Entry into a Material Definitive Agreement

On May 19, 2022, the Company entered into the Voting Agreement with GP-HGM LLC (the “Special Voting Holder”), providing that the Special Voting Holder will vote all shares of Special Voting Stock on each of the Reverse Stock Split Proposal (as herein defined) and the Preferred Stock Increase Proposal (as herein defined). At the Annual Meeting, stockholders will be asked to, among other proposals, (a) approve the adoption of an amendment to the Company’s certificate of incorporation (the “COI”) to effect a reverse split of its outstanding common stock at a ratio in the range of 1-for-2 to 1-for-20, to be determined at the discretion of the Company’s board of directors (the “Board of Directors”) and publicly disclosed prior to the effectiveness of such reverse stock split, whereby each outstanding 2 to 20 shares would be reclassified and combined into 1 share of our common stock, to enable the Company to comply with the Nasdaq Stock Market’s continued listing requirements (the Reverse Stock Split Proposal) and (b) to approve an amendment to the Company’s certificate of incorporation to increase the number of authorized shares of preferred stock from 20,000,000 shares to 40,000,000 shares (the “Preferred Stock Increase Proposal”).

Pursuant to the Voting Agreement, the Special Voting Holder has agreed to purchase from the Company \$1,000,000 shares of Special Voting Stock for an aggregate purchase price of \$100. The Special Voting Holder has further agreed to vote for the Reverse Stock Split Proposal and the Preferred Stock Increase Proposal in the same proportion as the votes cast on such proposals by the holders of Common Stock and Tandem Preferred Stock (excluding abstentions and, if applicable, broker non-votes). By way of example, if holders of 40% in voting power of the outstanding shares of Common Stock and Tandem Preferred Stock attend the meeting and, of that 40%, holders of 80% in voting power of the shares of Common Stock and Tandem Preferred Stock present vote in favor of the Reverse Stock Split Proposal, and holders of 20% in voting power of the shares of Common Stock and Tandem Preferred Stock present vote against Reverse Stock Split Proposal, then the Special Voting Holder will cause 80% of the voting power of the outstanding shares of Special Voting Stock to be voted in favor of Reverse Stock Split Proposal and 20% of the voting power of the outstanding shares of Special Voting Stock to be voted against Reverse Stock Split Proposal. By way of further example, if holders of 40% in voting power of the outstanding shares of Common Stock and Tandem Preferred Stock attend the meeting and, of that 40%, holders of 70% in voting power of the shares of Common Stock and Tandem Preferred Stock present vote in favor of Preferred Stock Increase Proposal, and holders of 30% in voting power of the shares of Common Stock and Tandem Preferred Stock present vote against Preferred Stock Increase Proposal, then the holder of the Special Voting Stock will cause 70% of the voting power of the outstanding shares of Special Voting Stock to be voted in favor of Preferred Stock Increase Proposal and 30% of the voting power of the outstanding shares of Special Voting Stock to be voted against Preferred Stock Increase Proposal.

The Company has further agreed to redeem the shares of Special Voting Stock on the first business day following the later of (a) the date on which the voting on the Reverse Stock Split Proposal has concluded and the polls on the Reverse Stock Split Proposal have closed and (b) the date on which the voting on the Preferred Stock Increase Proposal has concluded and the polls on the Preferred Stock Increase Proposal have closed for an aggregate price of \$100.

The foregoing description of the Voting Agreement does not purport to be complete and is qualified in its entirety by reference to the full text of the Voting Agreement, a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and is incorporated by reference.

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

Departure of CEO

As previously announced on the Company's current report on 8-K filed on March 31, 2022 and modified on Amendment No. 1 to the Company's annual report on form 10-K filed on May 2, 2022, Ronald Cogburn has stepped down from his position as Chief Executive Officer of the Company, effective May 15, 2022.

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

The information included under the headings "Introductory Note" and Item 1.01 Entry into a Material Definitive Agreement in this current report on Form 8-K are incorporated herein by reference.

Series A Preferred

On May 17, 2022, the Company decreased the number of Series A Perpetual Convertible Preferred Stock (“Series A Preferred Stock”) outstanding from 11,500,000 to 2,800,000 shares, which number exceeds the number of shares of Preferred Stock issued and outstanding, in order to allow for a sufficient number of shares of the Tandem Preferred Stock to be authorized.

By-Laws

Also on May 17, 2022, the Company adopted the Third Amended and Restated Bylaws (the “Bylaws Amendment”). The Company’s by-laws had originally been drafted at a time when the Company had a controlling stockholder and two nomination agreements. In connection with the recent exchange offers, the Company undertook a comprehensive review of its by-laws, which led to an updating of its by-laws through the Bylaws Amendment. The Bylaws Amendment among other things:

- removes references to the two nomination agreements, and related director quorum requirements;
- provides that stockholders submitting director nominations or stockholder proposals provide the Company with specified advance notice and related information to enable the Company to evaluate such nominations or proposals;
- contains provisions designed to facilitate virtual stockholder meetings;
- increases the maximum size of the board of directors to 11 members;
- contains greater specificity regarding the duties of the Chairman and Vice Chairman of the board;
- updated the indemnification provisions as they relate to derivative suits and establishes a procedure for determining the entitlement to indemnification;
- addresses certain alleged ambiguities relating to the tabulation of votes cited by the plaintiffs in a pending lawsuit;
- updates the notice provisions; and
- to reflect best practices that have developed since the adoption of the original bylaws of the Company.

The foregoing descriptions do not purport to be complete and are qualified in their entirety by reference to the full text of each of (1) the Certificate of Decrease, a copy of which is filed as Exhibit 3.1 to this Current Report on Form 8-K, (2) the Certificate of Designations for the Tandem Preferred Stock, a copy of which is filed as Exhibit 3.2 to this Current Report on Form 8-K, (3) the Certificate of Designations for the Special Voting Stock, a copy of which is filed as Exhibit 3.3 to this Current Report on Form 8-K and (4) and the Third Amended and Restated Bylaws, a copy of which is filed as Exhibit 3.4 to this Current Report on Form 8-K each of which is incorporated by reference.

Item 8.01 Other Events

Close of Offer

On May 17, 2022, the Company consummated the Offer. Pursuant to the Offer, 42,591,440 shares of Common Stock were exchanged for 2,129,572 shares of Series B Preferred Stock.

On May 17, 2022, the Company issued a press release announcing the closing of the Offer. A copy of the press release is filed herewith as Exhibit 99.1.

2018 Stock Incentive Plan

The Company has also indicated its intent to have its stockholders re-approve the amendment and restatement of its 2018 Stock Incentive Plan at the Annual Meeting. The amendment and restatement of the 2018 Stock Incentive Plan was approved by the stockholders at the 2021 annual meeting held December 31, 2021. Subsequent to such approval, a lawsuit was filed against the Company alleging that the Company did not properly count the broker non-votes on such matter, and that as a result the 2018 Stock Incentive Plan in its amended and restated form was not properly approved. Although the Company believes that it has meritorious defenses to such suit, the Company believes that it is less expensive to ask our stockholders to reapprove the amendment and restatement of the 2018 Stock Incentive Plan at the Annual Meeting than to litigate the suit through to vindication of the Company’s position. As such, the Company expects to rescind the delivery of shares subsequent to December 31, 2021 under the 2018 Stock Incentive Plan.

In connection with a comprehensive update of the Company’s Bylaws undertaken following the consummation of its recent exchange offer to reflect, among other things, the termination of the Director Nomination Agreements (as defined below), the Company also amended the provision of the Bylaws cited by the plaintiffs in the lawsuit as giving rise to their claim.

Upon the expected reapproval of the 2018 Stock Incentive Plan in its amended and restated form, the Company intends to settle the grants for which the settlement was rescinded in either shares of Common Stock or cash, as will be determined by the Company’s Compensation Committee in its sole discretion. If such newly settled grants are settled for shares of Common Stock, the Company expects to offer the recipients of such grants the opportunity to exchange such shares of Common Stock for shares of the Company’s Series B Preferred Stock and shares of the Company’s Tandem Preferred Stock in the same amount as such grantees would have been permitted to exchange shares of Common Stock in the recently completed exchange offer.

Item 9.01 Financial Statements and Exhibits.

(d)

Exhibit No.	Description
<u>3.1</u>	<u>Certificate of Decrease of Series A Perpetual Convertible Preferred Stock</u>
<u>3.2</u>	<u>Certificate of Designations, Preferences, Rights and Limitations of Tandem Preferred Stock</u>
<u>3.3</u>	<u>Certificate of Designations, Preferences, Rights and Limitations of Special Voting Preferred Stock</u>
<u>3.4</u>	<u>Third Amended and Restated Bylaws</u>
<u>10.1</u>	<u>Subscription, Voting and Redemption Agreement, dated as of May 19, 2022, by and between Exela Technologies, Inc. and GP-HGM LLC</u>
<u>99.1</u>	<u>Press Release dated May 17, 2022</u>

SIGNATURE

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

Dated: May 19, 2022

EXELA TECHNOLOGIES, INC.

By: /s/ Erik Mengwall
Name: Erik Mengwall
Title: Secretary

**CERTIFICATE OF DECREASE
OF
SERIES A PERPETUAL CONVERTIBLE PREFERRED STOCK
OF
EXELA TECHNOLOGIES, INC.**

(Pursuant to Section 151 of the
General Corporation Law of the State of Delaware)

EXELA TECHNOLOGIES, INC., a corporation organized and existing under the General Corporation Law of the State of Delaware (the “Corporation”), does hereby certify:

1. That a Certificate of Designations, Preferences, Rights and Limitations of Series A Perpetual Convertible Preferred Stock of the Corporation was filed with the Secretary of State of the State of Delaware on July 12, 2017.

2. That the Board of Directors of the Corporation duly adopted resolutions authorizing and directing a decrease in the number of designated shares of Series A Perpetual Convertible Preferred Stock of the Corporation, from 11,500,000 shares to 2,800,000 shares, and providing that such shares so decreased shall resume the status of authorized but unissued shares of Preferred Stock undesignated as to series, in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Decrease on this 17th day of May, 2022.

EXELA TECHNOLOGIES, INC.

By: /s/ Erik Mengwall
Name: Erik Mengwall
Title: Secretary

**CERTIFICATE OF DESIGNATIONS,
PREFERENCES, RIGHTS AND LIMITATIONS
OF
TANDEM PREFERRED STOCK
OF
EXELA TECHNOLOGIES, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

EXELA TECHNOLOGIES, INC., a Delaware corporation (the “**Company**”), certifies that pursuant to the authority contained in its Second Amended and Restated Certificate of Incorporation, as amended (the “**Second Amended and Restated Certificate of Incorporation**”), and in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the “**DGCL**”), the Board of Directors of the Company (the “**Board**”) has adopted the following resolution on May 17, 2022, creating a series of preferred stock, par value \$0.0001 per share, of the Company designated as Tandem Preferred Stock, which resolution remains in full force and effect on the date hereof:

RESOLVED, that, pursuant to the authority conferred upon the Board by the Second Amended and Restated Certificate of Incorporation and Section 151(g) of the DGCL, the Board hereby creates, authorizes and provides for the issuance of a series of preferred stock, par value \$0.0001 per share, of the Company and that the designation and number of shares thereof and the voting powers, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof are as follows:

1. Designation and Amount; Ranking.

(a) There shall be created from the 20,000,000 shares of preferred stock, par value \$0.0001 per share, of the Company authorized to be issued pursuant to the Second Amended and Restated Certificate of Incorporation, a series of preferred stock, designated as “**Tandem Preferred Stock**”, par value \$0.0001 per share (the “**Tandem Preferred Stock**”). The authorized number of shares of Tandem Preferred Stock shall initially be 5,000,000, which number the Board may from time to time increase (but not above the total number of authorized shares of preferred stock) or decrease (but not below the number of shares of Tandem Preferred Stock then-outstanding). Shares of Tandem Preferred Stock that are repurchased, redeemed or otherwise acquired by the Company shall be cancelled and shall revert to the status of authorized but unissued shares of preferred stock of the Company, undesignated as to series.

(b) The Tandem Preferred Stock, with respect to rights upon the liquidation, winding-up or dissolution of the Company, ranks: (i) senior to all Junior Stock; (ii) on parity with all Parity Stock; and (iii) junior to all Senior Stock, in each case as provided more fully herein.

2. Definitions. As used herein, the following terms shall have the following meanings:

(a) “**Affiliate**” shall have the meaning ascribed to it, on the date hereof, under Rule 144 of the Securities Act.

- (b) “**Board**” shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.
- (c) “**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
- (d) “**Capital Stock**” shall mean, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.
- (e) “**Common Stock**” shall mean the common stock, par value \$0.0001 per share, of the Company.
- (f) “**Holder**” shall mean a holder of record of the Tandem Preferred Stock.
- (g) “**Issue Date**” shall mean May 17, 2022, the original date of issuance of the Tandem Preferred Stock.
- (h) “**Junior Stock**” shall mean the Common Stock and any class of Capital Stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank junior to the Tandem Preferred Stock as to rights upon the liquidation, winding-up or dissolution of the Company.
- (i) “**Officer**” shall mean the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.
- (j) “**Parity Stock**” shall mean any class of Capital Stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank on a parity with the Tandem Preferred Stock as to dividend rights, and/or rights upon the liquidation, winding-up or dissolution of the Company. The Series B Preferred Stock is Parity Stock.
- (k) “**Person**” shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.
- (l) “**Senior Stock**” shall mean any class of the Company’s Capital Stock or series of preferred stock, the terms of which expressly provide that such class or series will rank senior to the Tandem Preferred Stock as to rights upon the liquidation, winding-up or dissolution of the Company, including the Series A Preferred Stock.
- (m) “**Series A Preferred Stock**” shall mean the Series A Perpetual Convertible Preferred Stock, par value \$0.0001 per share.

(n) “**Series B Preferred Stock**” shall mean the 6.00% Series B Cumulative Convertible Perpetual Preferred Stock, par value \$0.0001 per share.

3. Dividends. No Holder of shares of Tandem Preferred Stock shall be entitled to receive dividends of any kind with respect to shares of Tandem Preferred Stock.

4. Voting.

(a) Except as otherwise provided herein or required by applicable law, on all matters submitted to a vote of the stockholders of the Company, the holders of shares of Tandem Preferred Stock will be entitled to vote with the holders of the Common Stock as a single class. Each share of Tandem Preferred Stock will entitle the holder thereof to 20 votes per share, subject to adjustment as set forth in Section 4(b).

(b) If the Company issues shares of Common Stock as a dividend or distribution on shares of its Common Stock to all holders of its Common Stock, or if it effects a share split or share combination, the number of votes per share of Tandem Preferred Stock will be adjusted as follows:

$$V1 = V0 * (OS1/OS0)$$

Where:

V0 = the number of votes per share of Tandem Preferred Stock in effect immediately prior to the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

V1 = the number of votes per share of Tandem Preferred Stock in effect immediately on and after the ex-dividend date for such dividend or distribution, or the effective date of such share split or share combination;

OS0 = the number of shares of our Common Stock outstanding immediately prior to such dividend or distribution, or the effective date of such share split or share combination; and

OS1 = the number of shares of our Common Stock outstanding immediately after such dividend or distribution, or the effective date of such share split or share combination.

Any adjustment made pursuant to this paragraph shall become effective (x) at the open of business on the ex-dividend date for such dividend or other distribution or (y) the date on which such split or combination becomes effective, as applicable. If any dividend or distribution described in this paragraph is declared but not so paid or made, the number of votes per share of Tandem Preferred Stock shall be readjusted to the number of votes per share of Tandem Preferred Stock that would then be in effect if such dividend or distribution had not been declared. The number of votes per share of Tandem Preferred Stock will not be adjusted except as specifically described herein. Without limiting the foregoing, the number of votes per share of Tandem Preferred Stock will not be adjusted for:

(i) the issuance of any shares of Common Stock other than pursuant to any dividend or distribution on shares of Common Stock, share split or share combination or other transaction that the board of directors of the Companies determines requires an equitable adjustment;

(ii) the issuance or repurchase of any shares of Common Stock or options or rights to purchase such shares for consideration at, above, or below the then current market price of Common stock; and

(iii) accumulated and unpaid dividends or distributions with respect to the Series B Preferred Stock.

(c) So long as any shares of Tandem Preferred Stock remain outstanding, unless a greater percentage shall then be required by law, the Company shall not, without the affirmative vote or consent of holders of a majority in voting power of the Tandem Preferred Stock, voting together as a single class, given in person or by proxy, either in writing or at a meeting, amend, alter or repeal the provisions of the Second Amended and Restated Certificate of Incorporation, whether by merger, consolidation or otherwise, so as to materially and adversely affect any right, preference, privilege or voting powers of the Tandem Preferred Stock. Any increase in the amount of authorized preferred stock (including, without limitation, additional Tandem Preferred Stock) or the creation or issuance of any additional shares of Tandem Preferred Stock or other series of preferred stock, or any increase in the amount of authorized shares of such series, of Parity Stock and Senior Stock shall not be deemed to materially and adversely affect the rights, preferences, privileges or voting powers of the Tandem Preferred Stock specified herein.

5. *Liquidation Rights.*

(a) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each Holder of the Tandem Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders an amount in cash equal to the par value of such Tandem Preferred Stock with respect to each share of Tandem Preferred Stock held by such Holder, in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, the Common Stock.

(b) Neither the sale (for cash, shares of stock, securities or other consideration) of all or substantially all the assets or business of the Company (other than in connection with the liquidation, winding-up or dissolution of the Company) nor the merger or consolidation of the Company into or with any other Person shall be deemed to be a liquidation, winding-up or dissolution, voluntary or involuntary, for the purposes of this Section 5.

(c) After the payment in full of the preferential amounts provided for in this Section 5, no Holder of Tandem Preferred Stock shall have any right or claim to any of the remaining assets of the Company.

(d) In the event the assets of the Company available for distribution to Holders of Tandem Preferred Stock and holders of shares of Parity Stock upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to this Section 5, no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Tandem Preferred Stock, equally and ratably, in proportion to the full distributable amounts for which such holders of Tandem Preferred Stock and any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

6. *Restrictions on Issuance and Transfer .*

(a) Tandem Preferred Stock may only be issued: (i) as a dividend on a shares of Series B Preferred Stock outstanding as of the Issue Date, on the basis of one share of Tandem Preferred Stock with respect to each share of Series B Preferred Stock, or (ii) subsequent to the Issue Date, in connection with the issuance of additional shares of Series B Preferred Stock on the basis of one share of newly issued Tandem Preferred Stock with respect to each newly issued share of Series B Preferred Stock.

(b) With respect to a share of Tandem Preferred Stock (the “Tandem Share”) either issued as a dividend with respect to, or originally issued with, a share of Series B Preferred Stock (the “Underlying B Share”), if a Holder transfers such Underlying B Share to any transferee, the Tandem Share shall be automatically transferred simultaneously to such transferee without any further action by such Holder. A Holder may transfer a Tandem Share to any transferee only if such Holder also simultaneously transfers the Underlying B Share to such transferee. Any purported transfer of shares of Tandem Preferred Stock in violation of this Section 6 shall be null and void.

(c) Upon the redemption of a Holder’s shares of Series B Preferred Stock or the conversion of shares of Series B Preferred Stock into Common Stock, an equal number of such Holder’s shares of Tandem Preferred Stock shall, without any further action required by the Holder thereof, be automatically transferred to the Company for cancellation without the payment of any additional consideration by the Company.

7. *Transfer Agent and Registrar.*

The duly appointed transfer agent (the “**Transfer Agent**”) and Registrar (the “**Registrar**”) for the Tandem Preferred Stock shall be Continental Stock Transfer & Trust. The Company may, in its sole discretion, remove the Transfer Agent in accordance with the agreement between the Company and the Transfer Agent; provided that the Company shall appoint a successor transfer agent who shall accept such appointment prior to the effectiveness of such removal. For the avoidance of doubt, the Company shall notify the Registrar in writing upon the Company’s or any of its Affiliates’ purchases or sales of Tandem Preferred Stock.

8. *Certificates.*

If physical certificates are issued, then the Company shall, upon written request of a Holder, issue certificates in definitive form representing the shares of Tandem Preferred Stock held by such Holder. The Company may place appropriate legends on any certificate representing the shares of Tandem Preferred Stock to reflect any applicable restrictions on transfer.

9. Other Provisions.

(a) The shares of Tandem Preferred Stock shall be issuable only in whole shares.

(b) If any applicable law requires the deduction or withholding of any tax from any payment to a Holder on its Tandem Preferred Stock, the Company or an applicable withholding agent may withhold such tax.

(c) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice that initiates such notice period. Notice to any Holder shall be given to the registered address set forth in the Company's records for such Holder.

(d) Any payment required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day and no interest or dividends on such payment will accrue or accumulate, as the case may be, in respect of such delay.

(e) Holders of Tandem Preferred Stock shall not be entitled to any preemptive rights to acquire additional capital stock of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designations this 17th day of May, 2022.

EXELA TECHNOLOGIES, INC.

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

**CERTIFICATE OF DESIGNATIONS,
PREFERENCES, RIGHTS AND LIMITATIONS
OF
SPECIAL VOTING PREFERRED STOCK
OF
EXELA TECHNOLOGIES, INC.**

Pursuant to Section 151 of the General Corporation Law of the State of Delaware

EXELA TECHNOLOGIES, INC., a Delaware corporation (the “**Company**”), certifies that pursuant to the authority contained in its Second Amended and Restated Certificate of Incorporation, as amended (the “**Second Amended and Restated Certificate of Incorporation**”), and in accordance with the provisions of Section 151(g) of the General Corporation Law of the State of Delaware (the “**DGCL**”), the Board of Directors of the Company (the “**Board**”) has adopted the following resolution on May 19, 2022, creating a series of preferred stock, par value \$0.0001 per share, of the Company designated as Special Voting Preferred Stock, which resolution remains in full force and effect on the date hereof:

RESOLVED, that, pursuant to the authority conferred upon the Board by the Second Amended and Restated Certificate of Incorporation and Section 151(g) of the DGCL, the Board hereby creates, authorizes and provides for the issuance of a series of preferred stock, par value \$0.0001 per share, of the Company and that the designation and number of shares thereof and the voting powers, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof are as follows:

1. Designation and Amount; Ranking.

(a) There shall be created from the 20,000,000 shares of preferred stock, par value \$0.0001 per share, of the Company authorized to be issued pursuant to the Second Amended and Restated Certificate of Incorporation, a series of preferred stock, designated as “**Special Voting Preferred Stock**”, par value \$0.0001 per share (the “**Special Voting Preferred Stock**”). The authorized number of Special Voting Preferred Stock shall initially be 1,000,000, which number the Board may from time to time increase (but not above the total number of authorized shares of preferred stock) or decrease (but not below the number of shares of Special Voting Preferred Stock then-outstanding). Shares of Special Voting Preferred Stock that are repurchased, redeemed or otherwise acquired by the Company shall be cancelled and shall revert to the status of authorized but unissued shares of preferred stock of the Company, undesignated as to series.

(b) The Special Voting Preferred Stock, with respect to rights upon the liquidation, winding-up or dissolution of the Company, ranks: (i) senior to all Junior Stock; (ii) on parity with all Parity Stock; and (iii) junior to all Senior Stock, in each case as provided more fully herein.

2. Definitions. As used herein, the following terms shall have the following meanings:

(a) “**Annual Meeting**” means the Company’s 2022 annual meeting of stockholders, including any adjournments or postponements thereof, at which meeting the Stockholder Approval is sought.

- (b) “**Board**” shall mean the Board of Directors of the Company or, with respect to any action to be taken by the Board of Directors, any committee of the Board of Directors duly authorized to take such action.
- (c) “**Business Day**” shall mean any day other than a Saturday, Sunday or other day on which the Federal Reserve Bank of New York is authorized or required by law or executive order to close or be closed.
- (d) “**Capital Stock**” shall mean, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.
- (e) “**Common Stock**” shall mean the common stock, par value \$0.0001 per share, of the Company.
- (f) “**Holder**” or “**holder**” shall mean a holder of record of the Special Voting Preferred Stock.
- (g) “**Issue Date**” shall mean May 19, 2022, the original date of issuance of the Special Voting Preferred Stock.
- (h) “**Junior Stock**” shall mean the Common Stock and any class of Capital Stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank junior to the Special Voting Preferred Stock as to rights upon the liquidation, winding-up or dissolution of the Company.
- (i) “**Officer**” shall mean the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.
- (j) “**Parity Stock**” shall mean any class of Capital Stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank on a parity with the Special Voting Preferred Stock as to dividend rights, and/or rights upon the liquidation, winding-up or dissolution of the Company.
- (k) “**Person**” shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.
- (l) “**Preferred Stock Increase**” means, subject to Stockholder Approval, the increase in the number of authorized shares of Preferred Stock of the Company by up to an additional 20,000,000 shares.
- (m) “**Preferred Stock Increase Amendment**” means the amendment to the Second Amended and Restated Certificate of Incorporation that effects the Preferred Stock Increase.

(n) **“Preferred Stock Increase Proposal”** means the proposal to adopt the Preferred Stock Increase Amendment submitted for Stockholder Approval at the Annual Meeting.

(o) **“Redemption Date”** shall have the meaning specified in Section 6.

(p) **“Reverse Stock Split”** means, subject to Stockholder Approval, a reverse stock split of the outstanding shares of Common Stock that is effected by the Company’s filing of an amendment to the Second Amended and Restated Certificate of Incorporation with the Secretary of State of the State of Delaware, which reverse stock split shall have a ratio of not less than 1-for-2 and not greater than 1-for-20.

(q) **“Reverse Stock Split Amendment”** means the amendment to the Second Amended and Restated Certificate of Incorporation that effects the Reverse Stock Split.

(r) **“Reverse Stock Split Proposal”** means the proposal to adopt the Reverse Stock Split Amendment submitted for Stockholder Approval at the Annual Meeting.

(s) **“Senior Stock”** shall mean any class of the Company’s Capital Stock or series of preferred stock established after the Issue Date, the terms of which expressly provide that such class or series will rank senior to the Special Voting Preferred Stock as to rights upon the liquidation, winding-up or dissolution of the Company. The Series A Cumulative Convertible Perpetual Preferred Stock and the Series B Cumulative Convertible Perpetual Preferred Stock shall constitute Senior Stock.

(t) **“Stockholder Approval”** means such approval at the Annual Meeting of the Preferred Stock Increase Proposal or the Reverse Stock Split Proposal, as applicable, in either case, as required by the laws of the State of Delaware by the stockholders of the Company.

(u) **“Voting Agreement”** means that certain Subscription, Voting and Redemption Agreement by and between GP-HGM LLC and the Company.

(v) **“Voting Capital Stock”** means the Capital Stock of the Company entitled to vote on the Preferred Stock Increase Proposal or the Reverse Stock Split Proposal, as applicable.

(w) **“Voting Completion Date”** means the date on which voting by the Company’s stockholders on the Preferred Stock Increase Proposal and the Reverse Stock Split Proposal has concluded and the polls on the Preferred Stock Increase Proposal and the Reverse Stock Split Proposal have closed.

3. Dividends. No Holder of shares of Special Voting Preferred Stock shall be entitled to receive dividends of any kind with respect to shares of Special Voting Preferred Stock.

4. Voting. Except as otherwise provided herein or as otherwise required by law, the shares of Special Voting Preferred Stock shall have no voting rights. Notwithstanding the foregoing, the holders of shares of Special Voting Preferred Stock shall be entitled to vote together with the holders of the Company’s Voting Capital Stock as a single class, with each share of Special Voting Preferred Stock on the applicable record date entitled to 20,000 votes per share, on the Preferred Stock Increase Amendment and the Reverse Stock Split Amendment .

5. *Liquidation Rights.*

(a) In the event of any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, each Holder of the Special Voting Preferred Stock shall be entitled to receive and to be paid out of the assets of the Company available for distribution to its stockholders an amount in cash equal to the Par Value with respect to each share of Special Voting Preferred Stock held by such Holder, in preference to the holders of, and before any payment or distribution is made on, any Junior Stock, including, without limitation, the Common Stock.

(b) After the payment in full of the preferential amounts provided for in this Section 5, no Holder of Special Voting Preferred Stock shall have any right or claim to any of the remaining assets of the Company.

(c) In the event the assets of the Company available for distribution to Holders of Special Voting Preferred Stock and holders of shares of Parity Stock upon any liquidation, winding-up or dissolution of the Company, whether voluntary or involuntary, shall be insufficient to pay in full all amounts to which such holders are entitled pursuant to this Section 5, no such distribution shall be made on account of any shares of Parity Stock upon such liquidation, dissolution or winding-up unless proportionate distributable amounts shall be paid on account of the shares of Special Voting Preferred Stock, equally and ratably, in proportion to the full distributable amounts for which such holders of Special Voting Preferred Stock and any Parity Stock are entitled upon such liquidation, winding-up or dissolution.

6. *Redemption.*

(a) The Special Voting Preferred Stock shall be redeemed by the Company, in whole but not in part, automatically without any action by any Person on the first (1st) Business Day after the Voting Completion Date (the “**Redemption Date**”). In the event on the Redemption Date, the Company does not have funds legally available for such redemption, the Redemption Date shall be the first date on which such funds are legally available. Each outstanding share of the Special Voting Preferred Stock will be so redeemed for a cash payment in an amount equal to the Par Value and shall be effected on the books of the Company. Following the redemption by the Company of the Special Voting Preferred Stock on the Redemption Date, no Holder shall have further right, title or interest in or to the Special Voting Preferred Stock, whether under the terms hereof or under the Second Amended and Restated Certificate of Incorporation. Notice of the Annual Meeting delivered to stockholders shall constitute notice of a redemption of shares of Special Voting Preferred Stock. In connection with the filing of this Certificate of Designations, the Company has set apart funds for payment for the redemption of all shares of Special Voting Preferred Stock and shall continue to keep such funds apart for such payment through the payment of the Stated Value for the redemption of all such shares.

7. *Transfer; Form.*

Shares of Special Voting Preferred Stock will be uncertificated and represented in book-entry form. No shares of Special Voting Preferred Stock may be transferred, assigned or otherwise disposed of, directly or indirectly, by a Holder except as required by law or in accordance with the terms of the Voting Agreement. Notice of the foregoing restrictions on transfer shall be given in accordance with Section 151 of the DGCL.

8. Other Provisions.

(a) The shares of Special Voting Preferred Stock shall be issuable only in whole shares.

(b) If any applicable law requires the deduction or withholding of any tax from any payment or deemed dividend to a Holder on its Special Voting Preferred Stock, the Company or an applicable withholding agent may withhold such tax on cash dividends, shares of Special Voting Preferred Stock, Common Stock or sale proceeds paid, subsequently paid or credited with respect to such Holder or his successors and assigns.

(c) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice that initiates such notice period. Notice to any Holder shall be given to the registered address set forth in the Company's records for such Holder.

(d) Any payment required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day and no interest or dividends on such payment will accrue or accumulate, as the case may be, in respect of such delay.

(e) Holders of Special Voting Preferred Stock shall not be entitled to any preemptive rights to acquire additional Capital Stock of the Company.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designations this 19th day of May, 2022.

EXELA TECHNOLOGIES, INC.

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

**THIRD AMENDED AND RESTATED
BYLAWS
OF
EXELA TECHNOLOGIES, INC.**

**ARTICLE I
OFFICES**

1.1 Registered Office. The address of the registered office of Exela Technologies, Inc. (the “Corporation”) in the State of Delaware, and the name of its registered agent at such address, shall be set forth in the Corporation’s certificate of incorporation, as the same may be amended and/or restated from time to time (the “Certificate of Incorporation”).

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

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

2.1 Place of Meetings. All meetings of the stockholders shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting; provided that the Board of Directors may in its sole discretion determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication pursuant to Section 2.12.

2.2 Annual Meetings. The annual meeting of stockholders shall be held on such date and at such time as may be fixed by the Board of Directors and stated in the notice of the meeting, for the purpose of electing directors and for the transaction of only such other business as is properly brought before the meeting in accordance with these Third Amended and Restated Bylaws (these “Bylaws”).

(a) Notice of an annual meeting stating the place, if any, means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, date and hour of the 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 to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting not less than ten (10) nor more than sixty (60) days before the date of the annual meeting.

(b) To be properly brought before the annual meeting, business must be either (i) specified in the notice of annual meeting (or any supplement or amendment thereto) given by or at the direction of the Board of Directors, (ii) otherwise brought before the annual meeting by or at the direction of the Board of Directors, or (iii) otherwise properly brought before the annual meeting by a stockholder present in person who is a stockholder of record on the date of the giving of the notice and on the record date for the determination of stockholders entitled to vote at such annual meeting and who complies with the notice procedures in this Section 2.2 and the disclosure requirements of Section 2.13. For purposes of this Section 2.2, “present in person” shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or a qualified representative of such proposing stockholder, appear at such annual meeting. A “qualified representative” of such proposing stockholder shall be a duly authorized officer, manager or partner of such stockholder or any other person authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 2.13 and Section 3.3, and this Section 2.2 shall not be applicable to nominations except as expressly provided in Section 2.13 and Section 3.3. Except for proposals properly made in accordance with Rule 14a-8 under the Securities Exchange Act of 1934 (the “Exchange Act”), and the rules and regulations thereunder, clause (iii) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders. In addition to any other applicable requirements, for business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation. To be timely, a stockholder’s notice must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to the one-year anniversary of the preceding year’s annual meeting; provided, however, that in the event that the date of the annual meeting is more than thirty (30) days before or more than sixty (60) days after the one-year anniversary of the date of the preceding year’s annual meeting, notice by a stockholder, to be timely, must be delivered or mailed and received by the Secretary no later than the ninetieth (90th) day prior to such annual meeting or, if later, the close of business on the tenth (10th) day following the day on which the public announcement of the date of the annual meeting was first made by the Corporation. A stockholder’s notice to the Secretary shall set forth (a) as to each matter the stockholder proposes to bring before the annual meeting (i) a brief description of the business desired to be brought before the meeting, the reasons for conducting such business at the meeting and any material interest of such stockholder, the beneficial owners of such stock and each of their respective affiliates or associates or others acting in concert therewith, if any, in such business, (ii) the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such proposal or business includes a proposal to amend the Bylaws of the Corporation, the text of the proposed amendment), and (iii) a description of all agreements, arrangements and understandings between such stockholder, such beneficial owner and any of their respective affiliates or associates or others acting in concert therewith, if any, and any other person or persons (including their names) in connection with the proposal of such business by such stockholder; and (b) as to the stockholder giving the notice, the information required by Section 2.13.

(c) Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at the annual meeting except in accordance with the procedures set forth in this Article II, Section 2. The officer of the Corporation presiding at an annual meeting shall, if the facts warrant, determine and declare to the annual meeting that business was not properly brought before the annual meeting in accordance with the provisions of this Article II, Section 2, and if such officer should so determine, such officer shall so declare to the annual meeting and any such business not properly brought before the meeting shall not be transacted.

2.3 Special Meetings.

(a) Special meetings of the stockholders, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation of the Corporation (including any certificate of designation with respect to any class or series of stock, the "Certificate of Incorporation"), may only be called by a majority of the entire Board of Directors, or the President or the Chairman, and shall be called by the Secretary at the request in writing of stockholders (a "Stockholder Requested Meeting") owning a majority in voting power of the capital stock of the corporation issued and outstanding and entitled to vote (the "Requisite Special Meeting Percent").

(b) To be validly made in accordance with these Bylaws, a written request for a Stockholder Requested Meeting must:

(i) be delivered by hand or by United States first-class mail, postage prepaid, or by courier service to the attention of the Secretary at the principal executive offices of the Corporation during the period commencing on the date that is ninety (90) days after the date of the conclusion of the most recent annual meeting and ending on the date that is ninety (90) days prior to the one-year anniversary of the date of preceding annual meeting;

(ii) set forth any information necessary to verify the satisfaction of the condition set forth in Section 2.3(a);

(iii) set forth, as to each stockholder of record (unless such stockholder of record is acting solely as a nominee for a beneficial owner), each beneficial owner, if any, directing a stockholder of record to sign such request and each other person on whose behalf such beneficial owner or stockholder of record is acting, other than persons who have provided such request solely in response to any form of public solicitation for such requests, the information required to be disclosed pursuant to Section 2.13(a) of these Bylaws;

(iv) set forth a brief description of the business intended to be brought before the special meeting and the reasons for conducting such business at the special meeting;

(v) set forth, with respect to each nomination, if any, of a director for election to the board of directors proposed to be made at such special meeting, the information required to be disclosed pursuant to Sections 3.3 of these Bylaws as if the references in Sections 3.3 were to a special meeting of stockholders;

(vi) not relate to an item of business that is not a proper subject for stockholder action under applicable law;

(vii) be updated and supplemented, if necessary, so that the information provided or required to be provided pursuant to this Section 2.3(b) is true and correct as of the record date for notice of the meeting and as of the date that is ten (10) days prior to the date of the meeting or any adjournment or postponement thereof, with such update and supplement being delivered by hand or by United States first-class mail, postage prepaid, or by courier service to the attention of the Secretary at the principal executive offices of the Corporation (A) in the case of the update and supplement required to be made as of such record date, not later than five (5) business days after the record date for notice of the meeting, and (B) in the case of the update and supplement required to be made as of ten (10) days prior to the date of the meeting or any adjournment or postponement thereof, not later than eight (8) days prior to the date of 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);

(viii) set forth a representation that each stockholder of record or beneficial owner requesting the special meeting, or one or more representatives of each such stockholder or beneficial owner, intends to appear in person at the special meeting to present the proposal(s) or business to be brought before the special meeting;

(ix) set forth an acknowledgement that, prior to the special meeting, any disposition of shares of the capital stock of the Corporation included within any request for a special meeting will be deemed to be a revocation of such request if the shares of capital stock disposed result in the persons requesting the special meeting owning less than, in the aggregate, the Requisite Special Meeting Percent;

(x) not relate to an item that is identical or substantially similar to an item which (as determined in good faith by the board of directors), other than an Election Item (as defined, and which is addressed, in clause (xi) of this Section 2.3(b)), (a) was presented at an annual or special meeting of stockholders held not more than twelve (12) months before the delivery of the request for a Stockholder Requested Meeting or (b) is included in the Corporation's notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called for a date within one hundred twenty (120) days of the receipt by the Corporation of the request for a Stockholder Requested Meeting;

(xi) not be a proposed item of business involving the election or removal of directors, changing the size of the board of directors, the filling of vacancies and/or newly created directorships resulting from any increase in the authorized number of directors or any similar matter (as determined in good faith by the board of directors, an "Election Item"), if any Election Item (a) was presented at an annual or special meeting of stockholders held not more than one hundred twenty (120) days before delivery of the request for a Stockholder Requested Meeting or (b) is included in the notice of meeting as an item of business to be brought before an annual or special meeting of stockholders that has been called but not yet held or that is called within one hundred twenty (120) days of the receipt by the Corporation of the request for a Stockholder Requested Meeting; and

(xii) not be made in a manner that involved a violation of Regulation 14A of the Exchange Act or other applicable law.

(c) A Stockholder Requested Meeting shall be held at such date, time and place, if any, as the Board of Directors shall fix; *provided, however,* that the date of any such special meeting shall be not more than one hundred twenty (120) days after the request for such special meeting is made in accordance with this Section 2.3; *provided further* that the Board of Directors shall have discretion to determine in good faith whether the request is valid under the criteria set forth in this Section 2.3 or whether or not to proceed with such special meeting if before or after such special meeting is noticed the requirements of this Section 2.3 do not remain satisfied (including if requests for such Stockholder Requested Meeting are revoked such that the condition as to the Requisite Special Meeting Percent does not remain satisfied). Subject to the preceding sentence, in fixing a date and time for a special meeting pursuant to a Stockholder Requested Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting, and nothing herein will limit the power of the Board of Directors or the person presiding over any annual or special meeting in respect of the conduct of any such meeting.

(d) Unless otherwise provided by law, notice of a special meeting of stockholders, stating the place, if any, means of remote communication, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, 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 determining stockholders entitled to notice of the meeting, and purpose or purposes thereof, shall be given to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, not less than ten (10) or more than sixty (60) days before the date fixed for the meeting. Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

2.4 Quorum. At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, a quorum for the transaction of business at any meeting of stockholders shall require the presence, in person, by remote communication, if applicable, or by proxy duly authorized, of the holders of both (a) one-third of the voting power of the outstanding common stock and 6.00% Series B Cumulative Convertible Perpetual Preferred Stock entitled to vote at such meeting and (b) one-third of the voting power of the outstanding capital stock entitled to vote at such meeting. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the chairperson for such meeting or the holders of a majority of the votes entitled to be cast by the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally noticed. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder entitled to vote at the meeting.

2.5 Organization.

(a) The Chairman of the Board of Directors shall act as chairman of meetings of the stockholders. The Board of Directors may designate any other officer or director of the Corporation to act as chairman of any meeting in the absence of the Chairman of the Board of Directors.

(b) The Secretary of the Corporation shall act as secretary of all meetings of the stockholders, but in the absence of the Secretary the presiding officer may appoint any other person to act as secretary of any meeting.

2.6 Voting. Unless otherwise required by law, the Certificate of Incorporation or these Bylaws, any question (other than the election of directors) brought before any meeting of stockholders shall be decided by the vote of the holders of a majority in voting power of the shares represented in person or by proxy at the meeting and entitled to vote on such question. At all meetings of stockholders for the election of directors, directors shall be elected by a plurality in voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. Unless otherwise provided by the Certificate of Incorporation, each stockholder entitled to vote and represented at a meeting of stockholders shall be entitled to cast one vote for each share of the capital stock entitled to vote thereat held by such stockholder. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize any person or persons to act for such stockholder by proxy. All proxies shall be authorized by an instrument in writing or by electronic transmission in accordance with applicable law and shall be filed with the Secretary of the Corporation not later than the day on which exercised. No proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of stockholders, in his discretion, may require that any votes cast at such meeting shall be cast by written ballot.

2.7 Action of Shareholders Without Meeting.

(a) Except as otherwise provided by law or by the Certificate of Incorporation, any action required to be taken at any meeting of stockholders of the Corporation, or any action that may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation pursuant to subsection (b). A consent must be set forth in writing or in an electronic transmission. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of the holders to take the action were delivered to the Corporation as provided in subsection (b). Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

(b) A consent permitted by this Section 2.7 shall be delivered: (i) to the principal place of business of the Corporation; (ii) to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded; (iii) to the registered office of the Corporation in the State of Delaware by hand or by certified or registered mail, return receipt requested; or (iv) subject to the next sentence, in accordance with Section 116 of the General Corporation Law of the State of Delaware (the "DGCL") to an information processing system, if any, designated by the Corporation for receiving such consents. In the case of delivery pursuant to clause (iv), such consent must set forth or be delivered with information that enables the Corporation to determine the date of delivery of such consent and the identity of the person giving such consent, and, if such consent is given by a person authorized to act for a stockholder as proxy, such consent must comply with the applicable provisions of Section 212(c)(2) and Section 212(c)(3) of the DGCL.

(c) Any copy, facsimile, or other reliable reproduction of a consent in writing (or reproduction in paper form of a consent by electronic transmission) may be substituted or used in lieu of the original writing (or original reproduction in paper form of a consent by electronic transmission) for any and all purposes for which the original consent could be used, provided that such copy, facsimile, or other reproduction shall be a complete reproduction of the entire original writing (or original reproduction in paper form of a consent by electronic transmission).

2.8 Voting List. 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, that if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting. The list shall be arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing herein shall require the Corporation 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, during ordinary business hours, for a period of at least ten (10) days prior to the election, either (1) on a reasonably accessible electronic network so long as the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, the list shall be produced and kept at the time and place of election during the whole time thereof and may be inspected by any stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, then such 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. In the event that the Corporation determines to make the list available on an electronic network, the Corporation will take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

2.9 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 8 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

2.10 Adjournment. Any meeting of the stockholders, including one at which directors are to be elected, may be adjourned for such periods as the presiding officer of the meeting or the stockholders holding a majority in voting power of the shares present in person or by proxy and entitled to vote shall direct.

2.11 Inspectors. The Corporation shall appoint one or more inspectors of election, who may be employees of the Corporation, to act at the meeting or any adjournment thereof and to 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 so appointed or designated 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 such person's duties, shall take and sign an oath to execute faithfully the duties of inspector with strict impartiality and according to the best of such person's ability. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the 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 of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for an office at an election may serve as an inspector at such election.

2.12 Meetings by Means of Remote Communication. For the purposes of these Bylaws, 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 may, by means of remote communication:

(a) participate in a meeting of stockholders; and

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

2.13 Disclosure Requirements for Stockholder Business and Nominations. To be in proper form, a stockholder's notice (whether given pursuant to Section 2.2 or Section 3.3) to the Secretary must include the following, as applicable:

(a) As to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal, as applicable, is made, a stockholder's notice must set forth:

(i) the name and address of such stockholder, as they appear on the Corporation's books, of such beneficial owner, if any, and of their respective affiliates or associates or others acting in concert therewith,

(ii) (A) the class or series and number of shares of the Corporation which are, directly or indirectly, owned beneficially and of record by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (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, or 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 stockholder of record, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, may have entered into transactions that hedge or mitigate the economic effect of such instrument, contract or right, or 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 (any of the foregoing, a “Derivative Instrument”) directly or indirectly owned beneficially by such stockholder, the beneficial owner, if any, or any affiliates or associates or others acting in concert therewith, (C) any proxy, contract, arrangement, understanding, or relationship pursuant to which such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith have any right to vote any class or series of shares of the Corporation, (D) any agreement, arrangement, understanding, relationship or otherwise, including any repurchase or similar so-called “stock borrowing” agreement or arrangement, involving such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, directly or indirectly, 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 stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith 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 (any of the foregoing, a “Short Interest”), (E) any rights to dividends on the shares of the Corporation owned beneficially by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith 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 stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith is a general partner or, directly or indirectly, beneficially owns an interest in a general partner of such general or limited partnership, (G) any performance-related fees (other than an asset-based fee) that such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith are entitled to, based on any increase or decrease in the value of shares of the Corporation or Derivative Instruments, if any, including without limitation any such interests held by members of the immediate family sharing the same household of such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, (H) any significant equity interests or any Derivative Instruments or Short Interests in any principal competitor of the Corporation held by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith and (I) any direct or indirect interest of such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith in any contract with the Corporation, any affiliate of the Corporation or any principal competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement),

(iii) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act and the rules and regulations promulgated thereunder by such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, if any, and

(iv) any other information relating to such stockholder, such beneficial owner and their respective affiliates or associates or others acting in concert therewith, if any, that would be required to be disclosed in a proxy statement and form of proxy 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 and the rules and regulations promulgated thereunder;

(b) In addition, to be considered timely, a stockholder's notice shall further be updated and supplemented, if necessary, so that the information provided or required to be provided in such notice shall be true and correct as of the record date for 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 the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for 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 any adjournment or postponement thereof in the case of the update and supplement required to be made as of ten (10) business days prior to the meeting or any adjournment or postponement thereof. For the avoidance of doubt, the obligation to update and supplement as set forth in this paragraph or any other Section of these Bylaws shall not limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or under any other provision of the Bylaws or enable or be deemed to permit a stockholder who has previously submitted notice hereunder or under any other provision of the Bylaws to amend or update any proposal or to submit any new proposal, including by changing or adding nominees, matters, business and or resolutions proposed to be brought before a meeting of the stockholders.

(c) For purposes of these Bylaws, “public announcement” 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 pursuant to Section 13, 14 or 15(d) of the Exchange Act and the rules and regulations promulgated thereunder.

(d) Notwithstanding the provisions of these Bylaws, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Bylaw; provided, however, that any references in these Bylaws to the Exchange Act or the rules promulgated thereunder are not intended to and shall not limit the separate and additional requirements set forth in these Bylaws with respect to nominations or proposals as to any other business to be considered.

(e) Nothing in this Section 2.13 shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act or (ii) of the holders of any series of Preferred Stock if and to the extent provided for under law, the Certificate of Incorporation or these Bylaws. Subject to Rule 14a-8 under the Exchange Act, nothing in this Section 2.13 shall be construed to permit any stockholder, or give any stockholder the right, to include or have disseminated or described in the Corporation’s proxy statement any nomination of director or directors or any other business proposal.

ARTICLE III DIRECTORS

3.1 Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by law or in the Certificate of Incorporation. The number of directors which shall constitute the Board of Directors shall be not less than one (1) nor more than eleven (11); provided that the exact number of directors shall be fixed from time to time, within the limits specified in this Article III Section 1 or in the Certificate of Incorporation, by the Board of Directors. Directors need not be stockholders of the Corporation. The Board may be divided into Classes as more fully described in the Certificate of Incorporation.

3.2 Election; Term of Office; Resignation; Removal; Vacancies. Each director shall hold office until the next annual meeting of stockholders at which such director’s Class stands for election or until such director’s earlier resignation, removal from office, or death. Unless otherwise provided in the Certificate of Incorporation, vacancies and newly created directorships resulting from any increase in the authorized number of directors or from any other cause 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 chosen shall hold office until the next election of the class for which such director shall have been chosen, and until such director’s successor shall be elected and qualified, or until such director’s earlier resignation, removal from office, or death.

3.3 Nominations. Nominations of persons for election to the Board of Directors of the Corporation at a meeting of stockholders of the Corporation may be made at such meeting by or at the direction of the Board of Directors, by any committee or persons appointed by the Board of Directors or by any stockholder of the Corporation present in person and entitled to vote for the election of directors at the meeting who is a stockholder of record on the date of the giving of the notice and on the record date for the determination of stockholders entitled to vote at such annual meeting and who complies with the notice procedures set forth in this Section 3.3. For purposes of this Section 3.3, “present in person” and “qualified representative” shall have the meanings set forth in Article II, Section 2.2.

(a) Nominations by any stockholder shall be made pursuant to timely notice in writing to the Secretary of the Corporation. To be timely, a stockholder's notice for nominations to be made at an annual meeting shall be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not less than sixty (60) days nor more than ninety (90) days prior to one-year anniversary date of the preceding year's annual meeting; provided however, that in the event that the date of the meeting is more than thirty (30) days before or more than sixty (60) days after the one-year anniversary of the date of the preceding year's annual meeting, notice by the stockholder, to be timely, must be delivered or mailed and received no later than the ninetieth (90th) day prior to such annual meeting or, if later, the close of business on the tenth (10th) day following the day on which the public announcement of the date of the annual meeting was first made. To be timely, a stockholder's notice for nominations to be made at a special meeting must be delivered to or mailed and received by the Secretary at the principal executive offices of the Corporation not earlier than the ninetieth (90th) day prior to such special meeting and not later than the sixtieth (60th) day prior to such special meeting or, if later, the tenth (10th) day following the day on which public announcement of the date of such special meeting was first made. Such stockholder's notice to the Secretary shall set forth (i) as to each person whom the stockholder proposes to nominate for election or reelection as a director, (A) all information relating to such individual that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14 of the Exchange Act and the rules and regulations promulgated thereunder (including such individual's written consent to being named in the Corporation's proxy statement as a nominee and to serving as a director if elected) and (B) 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 such stockholder and beneficial owner, if any, and their respective affiliates and associates, or others acting in concert therewith, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 or any successor provision promulgated under Regulation S-K if the stockholder making the nomination and any beneficial owner on whose behalf the nomination is made, if any, or any affiliate or associate thereof or person acting in concert therewith, were the "registrant" for purposes of such rule and the nominee were a director or executive officer of such registrant; and (ii) as to the stockholder giving the notice the disclosure required by Section 2.13. The Corporation may require any proposed nominee to furnish such other information as may reasonably be required by the Corporation to determine the eligibility of such proposed nominee to serve as a director of the Corporation. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth herein. The officer of the Corporation presiding at an annual meeting shall, if the facts warrant, determine and declare to the meeting that a nomination was not made in accordance with the foregoing procedure, and if he should so determine, he shall so declare to the meeting and the defective nomination shall be disregarded.

(b) To be eligible to be a nominee for election or reelection as a director of the Corporation, a person nominated by a stockholder for election or reelection to the Board of Directors must deliver (in accordance with the time periods prescribed for delivery of notice under this Section 3.3) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such individual and the background of any other person or entity on whose behalf, directly or indirectly, the nomination is being made (which questionnaire shall be provided by the Secretary upon written request of the stockholder making the nomination), and a written representation and agreement (in the form provided by the Secretary upon written request) that such individual (A) is not and will not become a party to (1) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation, or (2) any Voting Commitment that could limit or interfere with such individual's ability to comply, if elected as a director of the Corporation, with such individual's fiduciary duties under applicable law, (B) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (C) will comply with the Corporation's corporate governance guidelines and other policies applicable to its directors, and has disclosed therein whether all or any portion of securities of the Corporation were purchased with any financial assistance provided by any other person and whether any other person has any interest in such securities, (D) in such individual's personal capacity and on behalf of any person or entity on whose behalf, directly or indirectly, the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply, with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation publicly disclosed from time to time, and (E) consents to being named as a nominee in the Corporation's proxy statement pursuant to Rule 14a-4(d) under the Exchange Act and any associated proxy card of the Corporation and agrees to serve if elected as a director.

3.4 Meetings. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware. The first meeting of each newly elected Board of Directors shall be held immediately after and at the same place as the meeting of the stockholders at which it is elected and no notice of such meeting shall be necessary to the newly elected directors in order to legally constitute the meeting, provided a quorum shall be present. Regular meetings of the Board of Directors may be held at such time and place as shall from time to time be determined by the Board of Directors with such determination to constitute the only notice of such regular meetings to which any director shall be entitled. Special meetings of the Board of Directors may be called by the President (including upon the written request of at least two directors then in office) or a majority of the entire Board of Directors. Notice thereof stating the place, date and hour of the meeting shall be given to each director either by mail not less than seventy-two (72) hours before the date of the meeting, personally or by telephone, facsimile, telegram or e-mail on twenty-four (24) hours' notice.

3.5 Quorum. Except as may be otherwise specifically provided by law, the Certificate of Incorporation or these Bylaws, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors or of any committee thereof, a majority of the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.6 Organization of Meetings. The Board of Directors shall elect one of its members to be Chairman of the Board of Directors. The Chairman of the Board of Directors shall lead the Board of Directors in fulfilling its responsibilities as set forth in these Bylaws, including its responsibility to oversee the performance of the Corporation, and shall determine the agenda and perform all other duties and exercise all other powers which are or from time to time may be delegated to him or her by the Board of Directors.

Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the President, or in the absence of the Chairman of the Board of Directors and the President by such other person as the Board of Directors may designate or the members present may select.

3.7 Actions of Board of Directors 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 of Directors or of such committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the consent or consents relating thereto shall be filled with the minutes of proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained.

3.8 Removal of Directors by Stockholders. Subject to the terms of the Certificate of Incorporation (including any certificate of designations), the entire Board of Directors or any individual Director may be removed from office with or without cause by a majority vote of the holders of the outstanding shares then entitled to vote at an election of directors. Notwithstanding the foregoing, if the Corporation's board is classified stockholders may effect such removal only for cause. In case the Board of Directors or any one or more directors is so removed, new directors may be elected at the same time for the unexpired portion of the full term of the director or directors so removed.

3.9 Resignations. Any Director may resign at any time by submitting his written resignation to the Board of Directors or Secretary of the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

3.10 Chairman of the Board; Vice Chairman of the Board. The Board of Directors may appoint from its members a Chairman of the Board and a Vice Chairman of the Board. If the Board of Directors appoints a Chairman of the Board, such Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. If the Board of Directors appoints a Vice Chairman of the Board, such Vice Chairman shall perform such duties and possess such powers as are assigned by the Board of Directors. Unless otherwise provided by the Board of Directors, the Chairman of the Board or, in the Chairman's absence, the Vice Chairman of the Board, if any, shall preside at all meetings of the Board of Directors.

3.11 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. 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 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. Any such committee, to the extent provided by law and in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to (a) approving or adopting, or recommending 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) adopting, amending or repealing any bylaw of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

3.12 Compensation. The directors may be paid their reasonable, documented out-of-pocket expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed amount (in cash or other form of consideration) for attendance at each meeting of the Board of Directors or a stated salary as director and any other meetings or events attended on behalf of the Corporation at the Corporation's request. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for attending committee meetings.

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

3.14 Meetings by Means of Remote Communication. Members of the Board of Directors or any committee designed by the Board of Directors may participate in a meeting of the Board of Directors or of a committee of the Board of Directors by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

ARTICLE IV
OFFICERS

4.1 General. The officers of the Corporation shall be elected by the Board of Directors and may consist of: Chief Executive Officer, President, Chief Financial Officer, Secretary and Treasurer. The Board of Directors, in its discretion, may also elect one or more Vice Presidents (including Executive Vice Presidents and Senior Vice Presidents), Assistant Secretaries, Assistant Treasurers, a Controller and such other officers as in the judgment of the Board of Directors may be necessary or desirable. Any number of offices may be held by the same person and more than one person may hold the same office, unless otherwise prohibited by law, the Certificate of Incorporation or these Bylaws. The officers of the Corporation need not be stockholders or directors of the Corporation.

4.2 Election. The officers of the Corporation shall be elected from time to time by the Board of Directors and shall hold office at the pleasure of the Board of Directors.

4.3 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President, and any such officer may, in the name and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

4.4 Chief Executive Officer. Subject to the provisions of these Bylaws and to the direction of the Board of Directors, the Chief Executive Officer shall have ultimate authority for decisions relating to the general management and control of the affairs and business of the Corporation and shall perform such other duties and exercise such other powers which are or from time to time may be delegated to him or her by the Board of Directors or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board of Directors.

4.5 President. At the request of the Chief Executive Officer, or in the absence of the Chief Executive Officer, or in the event of his or her inability or refusal to act, the President shall perform the duties of the Chief Executive Officer, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office. The President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe.

4.6 Chief Financial Officer. The Chief Financial Officer shall have general supervision, direction and control of the financial affairs of the Corporation and shall perform such other duties and exercise such other powers which are or from time to time may be delegated to him or her by the Board of Directors or these Bylaws, all in accordance with basic policies as established by and subject to the oversight of the Board of Directors. In the absence of a named Treasurer, the Chief Financial Officer shall also have the powers and duties of the Treasurer as hereinafter set forth and shall be authorized and empowered to sign as Treasurer in any case where such officer's signature is required.

4.7 Vice Presidents. At the request of the President or in the absence of the President, or in the event of his or her inability or refusal to act, the Vice President or the Vice Presidents if there is more than one (in the order designated by the Board of Directors) shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of such officer to act, shall perform the duties of such office, and when so acting, shall have all the powers of and be subject to all the restrictions upon such office.

4.8 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for the standing committees when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, then any Assistant Secretary shall perform such actions. If there be no Assistant Secretary, then the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest the affixing by his or her signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

4.9 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

4.10 Assistant Secretaries. Except as may be otherwise provided in these Bylaws, Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of his or her disability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

4.11 Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of his or her disability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of his or her office and for the restoration to the Corporation, in case of his or her death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his or her possession or under his or her control belonging to the Corporation.

4.12 Controller. The Controller shall establish and maintain the accounting records of the Corporation in accordance with generally accepted accounting principles applied on a consistent basis, maintain proper internal control of the assets of the Corporation and shall perform such other duties as the Board of Directors, the President or any Vice President of the Corporation may prescribe.

4.13 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

4.14 Vacancies. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors.

4.15 Resignations. Any officer may resign at any time by submitting his or her written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation, unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective.

4.16 Removal. Subject to the provisions of any employment agreement approved by the Board of Directors, any officer of the Corporation may be removed at any time, with or without cause, by the Board of Directors.

4.17 Compensation of Officers. The salaries and other compensation of all officers of the Corporation shall be fixed by or in the manner directed by the Board of Directors from time to time, and no officer shall be prevented from receiving such salary by reason of the fact that such person also is a director of the Corporation.

ARTICLE V CAPITAL STOCK

5.1 Form of Certificates. The shares of stock in the Corporation shall be represented by certificates, provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be in uncertificated form. Stock certificates shall be in such forms as the Board of Directors may prescribe and signed by any two authorized officers of the Corporation.

5.2 Signatures. Any or all of the signatures on a stock certificate may be a facsimile, including, but not limited to, signatures of officers of the Corporation and countersignatures of a transfer agent or registrar. In case an officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

5.3 Lost Certificates. The Board of Directors may direct a new stock certificate or certificates to be issued in place of any stock certificate or certificates theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issue of a new stock certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against the Corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by law and in these Bylaws. Transfers of certificated stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, which shall be canceled before a new certificate shall be issued. Transfers of uncertificated stock shall be made on the books of the Corporation only by the person then registered on the books of the Corporation as the owner of such shares or by such person's attorney lawfully constituted in writing and written instruction to the Corporation containing such information as the Corporation or its agents may prescribe. No transfer of uncertificated 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. The Corporation shall have no duty to inquire into adverse claims with respect to any stock transfer unless (a) the Corporation has received a written notification of an adverse claim at a time and in a manner which affords the Corporation a reasonable opportunity to act on it prior to the issuance of a new, reissued or re-registered share certificate, in the case of certificated stock, or entry in the stock record books of the Corporation, in the case of uncertificated stock, and the notification identifies the claimant, the registered owner and the issue of which the share or shares is a part and provides an address for communications directed to the claimant; or (b) the Corporation has required and obtained, with respect to a fiduciary, a copy of a will, trust, indenture, articles of co-partnership, bylaws or other controlling instruments, for a purpose other than to obtain appropriate evidence of the appointment or incumbency of the fiduciary, and such documents indicate, upon reasonable inspection, the existence of an adverse claim. The Corporation may discharge any duty of inquiry by any reasonable means, including notifying an adverse claimant by registered or certified mail at the address furnished by him or, if there be no such address, at his or her residence or regular place of business that the security has been presented for registration of transfer by a named person, and that the transfer will be registered unless within thirty days from the date of mailing the notification, either (a) an appropriate restraining order, injunction or other process issues from a court of competent jurisdiction; or (b) an indemnity bond, sufficient in the Corporation's judgment to protect the Corporation and any transfer agent, registrar or other agent of the Corporation involved from any loss which it or they may suffer by complying with the adverse claim, is filed with the Corporation.

5.5 Fixing Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of 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 (60) or fewer than ten (10) days before the date of such meeting. If the Board of Directors so fixes a record date for determining the stockholders entitled to notice of any meeting of stockholders, 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 the record date for determining the stockholders entitled to notice of such meeting, that a later date on or before the date of the meeting shall be the record date for determining the stockholders entitled to vote at such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at any meeting of stockholders or any adjournment thereof 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 such meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to receive notice of such adjourned meeting the same or an earlier date as that fixed for determining the stockholders entitled to vote at such adjourned meeting in accordance with the foregoing provisions of this subsection (a) of this Section 5.5.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action without a meeting in accordance with Section 228 of the DGCL, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken is delivered to the Corporation in the manner set forth in Section 2.7 of Article II of these Bylaws. If no record date has been fixed by the Board of Directors and prior action by the Board of Director is required by applicable law, the Certificate of Incorporation, or these Bylaws, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the date on which the Board of Directors adopts the resolution taking such prior action.

(c) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution, or allotment of any rights, or the stockholders entitled to exercise any rights in respect of any change, conversion, or exchange of capital stock, or for the purpose of any other lawful action, except as may otherwise be provided in these Bylaws, the Board of Directors may fix a record date. Such record date shall not precede the date upon which the resolution fixing such record date is adopted, and shall not be more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

5.6 Registered Stockholders. Prior to due presentment for transfer of any share or shares, the Corporation shall treat the registered owner thereof as the person exclusively entitled to vote, to receive notifications and to all other benefits of ownership with respect to such share or shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of the State Delaware.

ARTICLE VI
NOTICES

6.1 Form of Notice. Whenever under applicable law, the Certificate of Incorporation or these Bylaws notice is required to be given to any stockholder, such notice may be given in writing directed to the stockholder's mailing address as it appears on the records of the corporation or by electronic transmission. A notice to a stockholder shall be deemed given as follows: (a) if mailed, when the notice is deposited in the United States mail, postage prepaid, (b) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address, (c) if given by electronic mail, when directed to such stockholder's electronic mail address as it appears on the records of the corporation unless the stockholder has notified the corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the DGCL, and (d) if given by a form of electronic transmission consented to by the stockholder to whom the notice is given and otherwise meeting the requirements set forth above, (i) if by facsimile transmission, when directed to a number at which the stockholder has consented to receive notice, (ii) if by a posting on an electronic network together with separate notice to the stockholder of such specified posting, upon the later of (A) such posting and (B) the giving of such separate notice, and (iii) if by any other form of electronic transmission, when directed to the stockholder.

6.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of law or the Certificate of Incorporation or by these Bylaws of the Corporation, a written waiver, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends 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, directors, or members of a committee need be specified in any written waiver of notice unless so required by the Certificate of Incorporation.

ARTICLE VII
INDEMNIFICATION OF DIRECTORS AND OFFICERS

7.1 Indemnification.

(a) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or is otherwise involved (as a witness or otherwise) in 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 such person is or was a director, officer, employee or agent of the Corporation or any subsidiary thereof, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interest of the Corporation, and with respect to any criminal action or proceeding, had no reasonable cause to believe such person's 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 the person did not act in good faith and in a manner which such person 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.

(b) The Corporation shall indemnify any person who was or is a party or is threatened to be made a party to or is otherwise involved (as a witness or otherwise) in 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 such person 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 enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

7.2 Successful Defense. To the extent that a director, officer, employee or agent of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 of this Article, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

7.3 Indemnitor of First Resort. The Corporation hereby acknowledges that an indemnitee may have certain rights to other indemnification, advancement of expenses and/or insurance (collectively, the "Other Indemnitors"). The Corporation hereby agrees that with respect to any and all losses arising by reason of the fact that such indemnitee is or was a director, officer, employee or agent of the Corporation or any subsidiary thereof, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, (i) that the Corporation is the indemnitor of first resort (i.e., its obligations to an indemnitee are primary and any obligation of the Other Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by such indemnitee are secondary), (ii) that the Corporation shall be required to advance the full amount of expenses incurred by an indemnitee in accordance with this Article VII and shall be liable for the full amount of all losses to the extent legally permitted and as required by the terms of the Certificate of Incorporation and the Bylaws (or any other agreement between the Corporation and an indemnitee), without regard to any rights an indemnitee may have against the Other Indemnitors, and, (iii) that the Corporation irrevocably waives, relinquishes and releases the Other Indemnitors from any and all claims against the Other Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation further agrees that no advancement or payment by the Other Indemnitors on behalf of an indemnitee with respect to any claim for which such indemnitee has sought indemnification from the Corporation shall affect the foregoing and the Other Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of such indemnitee against the Corporation. The Corporation and each indemnitee agree that the Other Indemnitors are express third party beneficiaries of the terms of this Article VII.

7.4 Advancement of Expenses. Expenses (including attorneys' fees) incurred by an officer or director in defending any civil, criminal, administrative or investigative action, suit or proceeding may be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Section. Such expenses (including attorneys' fees) incurred by other employees and agents may be so paid upon such terms and conditions, if any, as the Board of Directors deems appropriate.

7.5 Amendment. Any repeal or amendment of this Article VII by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of the Certificate of Incorporation and the Bylaws inconsistent with this Article VII, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any proceeding (regardless of when such proceeding is first threatened, commenced or completed) arising out of or related to any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

7.6 Non-Exclusivity of Rights. The indemnification and advancement of expenses provided by, or granted pursuant to the other sections of this Article shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under any bylaw, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office.

7.7 Insurance. The Corporation shall have power to purchase and maintain insurance on behalf of any person who 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, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person 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 him against such liability under the provisions of this Article.

7.8 Determination of Entitlement to Indemnification. Any indemnification required or permitted under this Article (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director, officer, employee or agent is proper in the circumstances because such person has met all applicable standards of conduct set forth in this Article and Section 145 of the DGCL. Such determination shall be made, with respect to a person who is a director or officer of the Corporation at the time of such determination, (a) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum; (b) by a committee of such directors designated by majority vote of such directors, even though less than a quorum; (c) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion; or (d) by the stockholders. Such determination shall be made, with respect to any person who is not a director or officer of the Corporation at the time of such determination, in the manner determined by the Board of Directors (including in such manner as may be set forth in any general or specific action of the Board of Directors applicable to indemnification claims by such person) or in the manner set forth in any agreement to which such person and the Corporation are parties.

7.9 Interpretation.

(a) For purposes of this Article, references to “the Corporation” shall include, in addition to the resulting Corporation, any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer employee or agent of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Article with respect to the resulting or surviving Corporation as such person would have with respect to such constituent Corporation of its separate existence had continued.

(b) For purposes of this Article, references to “other enterprises” shall include employee benefit plans; references to “fines” shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to “serving at the request of the Corporation” shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee, or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation” as referred to in this Article.

7.10 Survival. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

ARTICLE VIII
GENERAL PROVISIONS

8.1 Reliance on Books and Records. Each Director, each member of any committee designated by the Board of Directors, and each officer of the Corporation, shall, in the performance of such person's duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation, including reports made to the Corporation by any of its officers, by an independent certified public accountant, or by an appraiser selected with reasonable care.

8.2 Maintenance and Inspection of Records.

(a) The Corporation shall, either at its principal executive office or at such place or places as designated by the Board of Directors, 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 may be amended to date, minute books, accounting books and other records.

(b) Any such records maintained by the Corporation may be kept on, or by means of, or be in the form of, any information storage device or method, provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records pursuant to the provisions of the DGCL. When records are kept in such manner, a clearly legible paper form produced from or by means of the information storage device or method shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper form accurately portrays the record.

(c) Any stockholder of record, in person or by attorney or other agent, shall, upon written demand under oath stating the purpose thereof, have the right pursuant to provisions of the DGCL, during the usual hours for business, to inspect for any proper purpose the Corporation's stock ledger, a list of its stockholders, and its other books and records and to make copies or extracts therefrom. In every instance where the stockholder is other than a record holder of stock, the demand under oath shall state the person's status as a stockholder, be accompanied by documentary evidence of beneficial ownership of the stock, and state that such documentary evidence is a true and correct copy of what it purports to be. A proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder. In every instance where an attorney or other agent is the person who seeks the right to inspection, the demand under oath shall be accompanied by a power of attorney or such other writing that authorizes the attorney or other agent to so act on behalf of the stockholder. The demand under oath shall be directed to the Corporation at its registered office in Delaware or at its principal executive office.

8.3 Inspection by Directors. Any director shall have the right pursuant to the provisions of the DGCL to examine the Corporation's stock ledger, a list of its stockholders, and its other books and records for a purpose reasonably related to his or her position as a director.

8.4 Dividends. Subject to the provisions of the Certificate of Incorporation, if any, dividends upon the capital stock of the Corporation may be declared by the Board of Directors at any regular or special meeting, pursuant to law. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for such other purpose as the Directors shall think conducive to the interest of the Corporation, and the Directors may modify or abolish any such reserve in the manner in which it was created.

8.5 Checks. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other persons as the Board of Directors may from time to time designate.

8.6 Fiscal Year. The fiscal year of the Corporation shall be as determined by the Board of Directors. If the Board of Directors shall fail to do so, the President shall fix the fiscal year.

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

8.8 Amendments. These Bylaws may be adopted, amended or repealed by the stockholders entitled to vote thereon at any regular or special meeting or, if the Certificate of Incorporation so provides, by the Board of Directors. The fact that such power has been so conferred upon the Board of Directors shall not divest the stockholders of the power nor limit their power to adopt, amend or repeal Bylaws.

8.9 Interpretation of Bylaws. All words, terms and provisions of these Bylaws shall be interpreted and defined by and in accordance with the DGCL, as amended, and as amended from time to time hereafter.

8.10 Certain Definitions. For purposes of these Bylaws:

(a) "Electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such a recipient through an automated process.

(b) "Electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information).

(c) "Electronic mail address" means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the "local part" of the address) and a reference to an internet domain (commonly referred to as the "domain part" of the address), whether or not displayed, to which electronic mail can be sent or delivered.

SUBSCRIPTION, VOTING AND REDEMPTION AGREEMENT

BETWEEN

EXELA TECHNOLOGIES, INC.

and

GP-HGM LLC

MAY 19, 2022

SUBSCRIPTION, VOTING AND REDEMPTION AGREEMENT

This Subscription, Voting and Redemption Agreement (the “*Agreement*”) is made as of the 19th day of May, 2022, between Exela Technologies, Inc., a Delaware corporation (the “*Company*”) and GP-HGM LLC (the “*Holder*”, together with the Company, the “*Parties*” and each a “*Party*”).

WHEREAS, the Nasdaq Stock Market has notified the Company that the Company is not in compliance with the \$1.00 minimum bid price requirement for the Company’s common stock (the “*Common Stock*”) to remain listed on the Nasdaq Capital Market, and the Company’s board of directors (the “*Board of Directors*”) has proposed an amendment to the certificate of incorporation of the Company to effect a reverse stock split of between 1 for 2 and 1 for 20 (the “*Reverse Stock Split*”) with the primary intent of increasing the price of the Common Stock in order to meet that requirement (the “*Reverse Stock Split Proposal*”);

WHEREAS, the Company believes that it is in the best interests of the Company and its shareholders to increase the number of authorized shares of Preferred Stock of the Company by up to an additional 20,000,000 shares (the “*Preferred Stock Increase*”) and the Company’s board of directors has proposed an amendment to the Company’s Second Amended and Restated Certificate of Incorporation (the “*Preferred Stock Increase Amendment*”) to be submitted for stockholder approval at the Company’s annual meeting (the “*Preferred Stock Increase Proposal*”);

WHEREAS, in order for each of the Reverse Stock Split Proposal and the Preferred Stock Increase Proposal to be adopted, each must be approved by the holders of a majority in voting power of the outstanding shares of capital stock entitled to vote thereon;

WHEREAS, the Board of Directors believes that the delisting of the Common Stock from the Nasdaq Capital Market would likely have a material adverse effect on the liquidity of the market for the Common Stock and the price at which the Common Stock would trade;

WHEREAS, the Board of Directors is concerned that while the holders of the Company’s Common Stock and Tandem Preferred Stock may favor the Reverse Stock Split and the Preferred Stock Increase, the Company will not be able to obtain the vote of the holders of a majority of the outstanding Common Stock and Tandem Preferred Stock in favor of the amendments to effect the Reverse Stock Split and the Preferred Stock Increase due to the widely dispersed stock holdings of the Company’s stockholders (as of April 21, 2022 there were over 100,000 beneficial owners of Common Stock), the advice of the Company’s proxy solicitor, and the Company’s most recent annual meeting of stockholders where the Company had difficulty obtaining a quorum of shares, which at the time required a majority of the outstanding shares of Common Stock;

WHEREAS, as a result of the difficulty of obtaining a quorum of shares at the most recent annual meeting, the Company postponed the meeting in order to amend its bylaws to reduce the quorum requirement and to solicit additional proxies;

WHEREAS, the Company has created a separate class of preferred stock, the Special Voting Preferred Stock, par value \$0.0001 per share (the “*Special Voting Stock*”) by resolutions of the Board of Directors as set forth in a Certificate of Designation dated May 19, 2022 (the “*Certificate of Designation*”) and is entering into this Agreement with Holder for the sole purpose of ensuring that if a majority of the votes cast by holders of shares of Common Stock and Tandem Preferred Stock at the Annual Meeting are in favor of each of the Reverse Stock Split Proposal and the Preferred Stock Increase Proposal, that the Reverse Stock Split Proposal and the Preferred Stock Increase Proposal will be approved under Delaware law, enabling the Company to effect the Reverse Stock Split and the Preferred Stock Increase and maintain the listing of the Common Stock on the Nasdaq Capital Market;

WHEREAS, to avoid the risk that a holder of the Company's debt securities will assert that the issuance of the Special Voting Shares will constitute a 'Change of Control' under the applicable agreement, the Company has requested that Holder, as an affiliate of HandsOn Global Management LLC act as the Holder hereunder; and

WHEREAS, the Company and the Holder have agreed to enter into this Agreement to provide for, among other things, the issuance, voting and redemption of the Special Voting Shares on the terms set forth herein.

NOW THEREFORE, in consideration of the premises, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1
INTERPRETATION

1.1 Defined Terms

For the purposes of this Agreement, unless the context otherwise requires, the following terms shall have the respective meanings set out below and grammatical variations of such terms shall have corresponding meanings.

“**Affiliate**” shall have the meaning ascribed to it under Section 12b-2 of the Securities Exchange Act of 1934, as amended.

“**Agreement**” has the meaning given to such term in the preamble.

“**Annual Meeting**” means the Company's 2022 annual meeting of stockholders, including any adjournments or postponements thereof, at which meeting the Stockholder Approval is sought.

“**Board of Directors**” has the meaning given to such term in the recitals.

“**Business Day**” means any day, other than a day on which banks are generally closed in New York, NY.

“**Certificate of Designation**” has the meaning given to such term in the recitals.

“**Common Stock**” has the meaning given to such term in the recitals.

“**Company**” has the meaning given to such term in the preamble.

“**Governmental Entity**” means any domestic or foreign federal, provincial, regional, state, municipal or other government, governmental department, agency, authority or body (whether administrative, legislative, executive or otherwise), court, tribunal, commission or commissioner, bureau, minister or ministry, board or agency, or other regulatory authority, including any securities regulatory authorities and stock exchange.

“**Holder**” has the meaning given to such term in the preamble.

“**Indemnified Persons**” has the meaning given to such term in Section 5.3.

“**Lien**” has the meaning given to such term in Section 5.3.

“**Losses**” has the meaning given to such term in Section 3.5.

“**Other Voting Power**” has the meaning given to such term in Section 3.1(b).

“**Party**” and “**Parties**” have the meanings given to such terms in the preamble.

“**Person**” means and includes any individual, company, limited partnership, general partnership, joint stock company, limited liability company, joint venture, association, company, trust, bank, trust company, pension fund, business trust or other organization, whether or not a legal entity, and any Governmental Entity.

“**Preferred Stock Increase**” has the meaning given to such term in the recitals.

“**Preferred Stock Increase Amendment**” has the meaning given to such term in the recitals.

“**Preferred Stock Increase Proposal**” has the meaning given to such term in the recitals.

“**Record Date**” means the record date established by the Company for purposes of determining stockholders entitled to vote at the Annual Meeting;

“**Redemption Date**” has the meaning given to such term in Section 3.3.

“**Reverse Stock Split**” has the meaning given to such term in the recitals.

“**Reverse Stock Split Amendment**” means the amendment to the Company’s certificate of incorporation that effects the Reverse Stock Split.

“**Reverse Stock Split Date**” means the date on which the Reverse Stock Split is consummated and deemed effective.

“**Reverse Stock Split Proposal**” has the meaning given to such term in the recitals.

“**Special Voting Shares**” has the meaning given to such term in Section 2.2(a).

“**Special Voting Stock**” has the meaning given to such term in the recitals.

“**Stockholder Approval**” means approval of the adoption of the Reverse Stock Split Amendment and the Preferred Stock Increase Amendment at the Annual Meeting by holders of a majority in voting power of the outstanding shares of Common Stock, Tandem Preferred Stock and Special Voting Stock entitled to vote thereon, voting together as a single class.

“**Tandem Preferred Stock**” means the Company’s tandem preferred stock that trades together with the Company’s 6.00% Series B Cumulative Convertible Perpetual Preferred Stock.

“**Transfer**” shall mean any direct or indirect offer, sale, assignment, Lien, pledge, hypothecation, disposition, loan or other transfer (by operation of law or otherwise), either voluntary or involuntary, or entry into any contract, option or other arrangement or understanding with respect to any offer, sale, assignment, Lien, pledge, hypothecation, disposition, loan or other transfer (by operation of law or otherwise), of the Special Voting Shares or any right or interest therein, excluding, for the avoidance of doubt, entry into this Agreement.

1.2 Rules of Construction

Except as may be otherwise specifically provided in this Agreement and unless the context otherwise requires, in this Agreement:

- (a) the terms “Agreement”, “this Agreement”, “the Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder” and similar expressions refer to this Agreement in its entirety and not to any particular provision hereof and include any schedules or exhibits thereto;
- (b) references to an “Article” or “Section” followed by a number or letter refer to the specified Article or Section to this Agreement;
- (c) the division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;
- (d) words importing the singular number only shall include the plural and vice versa and words importing the use of any gender shall include all genders;
- (e) the word “including” is deemed to mean “including without limitation”;
- (f) any reference to this Agreement means this Agreement as amended, modified, replaced or supplemented from time to time;
- (g) any reference to a statute, regulation or rule shall be construed to be a reference thereto as the same may from time to time be amended, re-enacted or replaced, and any reference to a statute shall include any regulations or rules made thereunder;
- (h) all dollar amounts refer to currency of the United States;
- (i) any time period within which a payment is to be made or any other action is to be taken hereunder shall be calculated excluding the day on which the period commences and including the day on which the period ends; and

(j) whenever any action is required to be taken or period of time is to expire on a day other than a Business Day, such action shall be taken or period shall expire on the next following Business Day.

1.3 Entire Agreement

This Agreement constitute the entire agreement between the Parties with respect to the subject matter described herein and supersede all prior agreements, understandings, negotiations and discussions, whether written or oral.

1.4 Time of Essence

Time shall be of the essence of this Agreement.

ARTICLE 2 SUBSCRIPTION

2.1 Authorized Shares

The Board of Directors has duly authorized and adopted resolutions to create the Special Voting Stock, and the Company has filed with the Secretary of State of the State of Delaware the Certificate of Designation for the Special Voting Stock.

2.2 Purchase of Special Voting Stock

(a) Upon receipt of the consideration set forth in Section 2.2(b), the Company shall issue and sell to the Holder 1,000,000 shares of Special Voting Stock (the "*Special Voting Shares*").

(b) The Holder hereby subscribes for and agrees to purchase the Special Voting Shares for an aggregate purchase price of \$100.

(c) The Company represents and warrants to the Holder that upon the issuance of the Special Voting Shares as provided for in this Agreement, the Special Voting Shares will be duly authorized, validly issued, fully paid and nonassessable.

ARTICLE 3 VOTING; REDEMPTION; AND OTHER COVENANTS

3.1 Voting Agreement

(a) The Holder shall cause the Special Voting Shares to be present, in person, or by proxy, at the Annual Meeting for purposes of calculating a quorum.

(b) The Holder covenants and agrees to vote or cause to be voted the Special Voting Shares “FOR” or “AGAINST” each of the Reverse Stock Split Proposal and the Preferred Stock Increase Proposal in the same proportion as all other votes cast with respect to the Reverse Stock Split Proposal at the Annual Meeting (excluding abstention and broker non-votes). By way of example, if holders of 40% of the outstanding shares of Common Stock and Tandem Preferred Stock attend the Annual Meeting and of that 40%, holders of 80% of the votes represented by the shares present vote in favor of the Reverse Stock Split Proposal, and holders of 20% of the votes represented by the shares present vote against the Reverse Stock Split Proposal, then Holder will vote or will cause to be voted 80% of the Special Voting Shares in favor of the Reverse Stock Split Proposal and 20% of the Special Voting Shares against the Reverse Stock Split Proposal. By way of example, if holders of 40% of the outstanding shares of Common Stock and Tandem Preferred Stock attend the Annual Meeting and of that 40%, holders of 70% of the votes represented by the shares present vote in favor of the Preferred Stock Increase Proposal, and holders of 30% of the votes represented by the shares present vote against the Preferred Stock Increase Proposal, then Holder will vote or will cause to be voted 70% of the Special Voting Shares in favor of the Preferred Stock Increase Proposal and 30% of the Special Voting Shares against the Preferred Stock Increase Proposal.

3.2 Grant of Irrevocable Proxy

Upon the issuance of the Special Voting Shares, the Holder hereby irrevocably appoints the Company and any designee of the Company, and each of them individually, as the Holder’s proxy and attorney-in-fact, with full power of substitution, to vote the Special Voting Shares solely to the extent and in the manner specified in Section 3.1. This proxy is given to secure the performance of the duties of the Holder under this Agreement, and its existence will not be deemed to relieve the Holder of its obligations under Section 3.1. The proxy and power of attorney granted pursuant to this Section 3.2 shall be irrevocable, shall be deemed to be coupled with an interest sufficient in law to support an irrevocable proxy and shall revoke any and all prior proxies granted by the Holder with regard to the Special Voting Shares, and the Holder acknowledges that the proxy constitutes an inducement for the Company to enter into this Agreement. The power of attorney granted by the Holder is a durable power of attorney and shall survive the bankruptcy, dissolution, death or incapacity of the Holder. The proxy and power of attorney granted hereunder shall terminate at the earlier of (i) the valid termination of this Agreement in accordance with Section 6.3 and (ii) immediately following the conclusion of the Annual Meeting following the receipt of Stockholder Approval.

3.3 Redemption

The Parties hereby acknowledge and agree that the Special Voting Shares shall be redeemed by the Company, in whole but not in part, automatically without any action by any Party on the first (1st) Business Day after the later of (a) the date on which the voting on the Reverse Stock Split Proposal has concluded and the polls on the Reverse Stock Split Proposal have closed and (b) the date on which the voting on the Preferred Stock Increase Proposal has concluded and the polls on the Preferred Stock Increase Proposal have closed (the “*Redemption Date*”), pursuant to and accordance with the Certificate of Designation. The Special Voting Shares will be so redeemed at an aggregate price of \$100 and shall be effected on the books of the Company. Following the redemption by the Company of the Special Voting Shares on the Redemption Date, the Holder shall have no further right, title or interest in or to the Special Voting Shares, whether under the Certificate of Designation, this Agreement or otherwise, and this Agreement shall terminate in accordance with Section 6.3.

3.4 No Transfer

From the date hereof through the Redemption Date, without the Company's prior written consent, the Holder agrees not to (a) Transfer the Special Voting Shares or any interest therein (or enter into any transaction which is designed to, or might reasonably be expected to, result in the Transfer (whether by actual disposition or effective economic disposition due to cash settlement or otherwise)) to any third party or (b) deposit the Special Voting Shares into a voting trust or, except as otherwise provided in this Agreement, enter into a voting agreement or arrangement with respect thereto or grant any proxy or power of attorney with respect thereto. Any Transfer or attempted Transfer of the Special Voting Shares in violation of this Section 3.4 shall, to the fullest extent permitted by law, be null and void *ab initio*.

3.5 Indemnification

The Company shall indemnify and hold harmless the Holder, its directors and officers, partners, members, managers, employees, agents, and representatives (collectively, "*Indemnified Persons*"), to the fullest extent permitted by applicable law, from and against any losses, claims, damages, liabilities, joint or several, costs (including reasonable costs of preparation and reasonable attorneys' fees) and expenses, judgments, fines, penalties, interest, settlements or other amounts arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative, in which any Indemnified Person may be involved, or is threatened to be involved, as a party or otherwise (collectively, "*Losses*"), promptly as incurred, arising out of, based upon or resulting from (A) the Holder's entry into this Agreement or the taking of any actions contemplated by this Agreement and (B) the Holder's ownership or voting of the Special Voting Shares in accordance with the terms of this Agreement, provided that the foregoing indemnity shall not apply to Losses to the extent that they have resulted from the fraud, bad faith or willful misconduct of such Indemnified Person. The right of indemnification provided hereunder includes the right to be paid or reimbursed by the Company the reasonable expenses (including reasonable attorneys' fees) incurred by an Indemnified Person who was, is or is threatened to be made a named defendant or respondent in a proceeding or action in advance of the final disposition of the proceeding and without any determination as to such person's ultimate entitlement to indemnification; provided, payment of such expenses incurred by any such person in advance of the final disposition of a claim or proceeding will be made only upon delivery to the Company of a written affirmation by such person of its good faith belief that it has met the standard of conduct necessary for indemnification hereunder and a written undertaking by such person to repay all amounts so advanced if it is ultimately determined by a court of competent jurisdiction that such person is not entitled to be indemnified hereunder. Promptly after its receipt of notice of the commencement of any action or proceeding, any Indemnified Person will notify the Company in writing of the commencement thereof. If the Company so elects, it may assume the defense of such action or proceeding in a timely manner, including the employment of counsel (reasonably satisfactory to the Indemnified Person) and payment of expenses, provided the Company permit an Indemnified Person and counsel retained by an Indemnified Person at such Indemnified Person's expense to participate in such defense. Notwithstanding the foregoing, in the event (i) the Company fails to promptly assume the defense and employ counsel reasonably satisfactory to the Indemnified Person, or (ii) the Indemnified Person has been advised by counsel that there exist actual or potential conflicting interests between the Company and its counsel and such Indemnified Person, an Indemnified Person may employ separate counsel (in addition to local counsel) to represent or defend such Indemnified Person in such action or proceeding, and the Company agrees to pay the fees and disbursements of such separate counsel as incurred; provided however, that the Company will not, in connection with any one such action or proceeding, or separate but substantially similar actions or proceedings arising out of the same general allegations, be liable for fees and expenses of more than one separate firm of attorneys (in addition to any local counsel). The Company agrees not to waive, release or settle any action or proceeding in respect of which indemnification may be sought hereunder without the prior written consent of the applicable Indemnified Person, unless such waiver, release or settlement includes no admission of wrongdoing by the Indemnified Person. The Company shall not be liable to an Indemnified Person under this Agreement for amounts paid in settlement of any threatened or pending claim, demand, action, suit or proceeding in respect of which indemnification may be sought under this Agreement without the Company's prior written consent, which shall not be unreasonably withheld, delayed or conditioned.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to the Holder as follows:

4.1 Authorization; No Conflicts

The execution, delivery and performance by the Company of this Agreement, and the consummation of the transactions contemplated hereby (a) are within the Company's power and authority, (b) have been duly authorized by all necessary proceedings on its behalf, and (c) do not conflict in any material respect with or require any consent or approval pursuant to (unless any such required consent or approval has been obtained prior to the consummation of the transactions contemplated by this Agreement and remains in full force and effect) its organizational documents or conflict with or breach, or require any consent from or approval under, any law, regulation, order, judgment, writ, injunction, license, permit, agreement or instrument applicable to the Company.

4.2 Enforceability

This Agreement has been validly executed by the Company and constitutes a legally binding obligations of the Company, enforceable against the Company in accordance with the terms and conditions hereof, except as any enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles (whether sought in equity or at law).

4.3 ACKNOWLEDGMENT

THE COMPANY ACKNOWLEDGES AND AGREES THAT THE REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 5 CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE HOLDER IN CONNECTION WITH THIS AGREEMENT, WHETHER IN WRITING, ORALLY OR OTHERWISE, AND THE COMPANY UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE IN CONNECTION WITH THIS AGREEMENT, EXPRESS OR IMPLIED AND THE ACCURACY AND COMPLETENESS THEREOF ARE SPECIFICALLY DISCLAIMED BY THE HOLDER AND ARE NOT BEING RELIED UPON BY THE COMPANY OR ANY OF ITS REPRESENTATIVES OR AFFILIATES.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF THE HOLDER

The Holder represents and warrants to the Company as follows:

5.1 Authorization; No Conflicts

The execution, delivery and performance by the Holder of this Agreement, and the consummation of the transactions contemplated hereby (a) are within the Holder's power and authority, (b) have been duly authorized by all necessary proceedings on the Holder's behalf (if any), and (c) do not conflict with or breach, or require any consent or approval under, any law, regulation, order, judgment, writ, injunction, license, permit, agreement or instrument applicable to the Holder.

5.2 Enforceability

This Agreement has been validly executed by the Holder and constitutes a legally binding obligation of the Holder, enforceable against the Holder in accordance with the terms and conditions hereof, except as any enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by general equitable principles (whether sought in equity or at law).

5.3 Title to Special Voting Shares

Upon issuance, the Holder will have good and valid title to the Special Voting Shares free and clear of any lien, encumbrance, pledge, charge, security interest, mortgage, title retention agreement, option, equity or other adverse claim (each, a "Lien"), and will not, in whole or in part, as of the Record Date, have (a) assigned, transferred, hypothecated, pledged or otherwise disposed of the Special Voting Shares or (b) given any Person any transfer order, power of attorney or other authority of any nature whatsoever with respect to the Special Voting Shares other than as contemplated hereunder.

5.4 Legal, Tax and Financial Advice

The Holder is aware of the legal, financial and tax matters related to this Agreement and the Holder has either sought and received professional legal, tax and financial advice regarding this Agreement and the matters related to this Agreement or has determined after reviewing the Agreement carefully that the Holder will waive its right to seek such professional advice.

5.5 ACKNOWLEDGMENT

THE HOLDER ACKNOWLEDGES AND AGREES THAT THE REPRESENTATIONS AND WARRANTIES SET FORTH IN SECTION 2.2(c) AND ARTICLE 4 CONSTITUTE THE SOLE AND EXCLUSIVE REPRESENTATIONS AND WARRANTIES OF THE COMPANY IN CONNECTION WITH THIS AGREEMENT, WHETHER IN WRITING, ORALLY OR OTHERWISE, AND HOLDER UNDERSTANDS, ACKNOWLEDGES AND AGREES THAT ALL OTHER REPRESENTATIONS AND WARRANTIES OF ANY KIND OR NATURE IN CONNECTION WITH THIS AGREEMENT, EXPRESS OR IMPLIED AND THE ACCURACY AND COMPLETENESS THEREOF (INCLUDING ANY RELATING TO THE FUTURE OR HISTORICAL FINANCIAL CONDITION, RESULTS OF OPERATIONS, ASSETS OR LIABILITIES OF THE COMPANY OR ITS SUBSIDIARIES OR THE ACCURACY AND COMPLETENESS OF ANY INFORMATION SUPPLIED RELATING TO THE COMPANY OR ITS SUBSIDIARIES) ARE SPECIFICALLY DISCLAIMED BY THE COMPANY AND ARE NOT BEING RELIED UPON BY THE HOLDER OR ANY OF ITS REPRESENTATIVES OR AFFILIATES.

ARTICLE 6 MISCELLANEOUS

6.1 Notices

(a) Any notice or other communication required or permitted to be given hereunder shall be in writing and shall be delivered in person, transmitted by facsimile or e-mail or similar means of recorded electronic communication or sent by registered mail, charges prepaid, addressed as follows:

(i) in the case of the Company:

c/o Exela Technologies
300 First Stamford Place, Second Floor West
Stamford, CT 06902
Attention: Erik Mengwall, Deputy General Counsel and Secretary
E-mail: legalnotices@exelatech.com

with a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Ave
New York, NY 10019
Attention: Maurice M. Lefkort; Sean M. Ewen
E-mail: mlefkort@willkie.com; sewen@willkie.com

(ii) in the case of the Holder, to the address of the Holder contained on the register maintained by the Company.

(b) Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted (or, if such day is not a Business Day or if delivery or transmission is made on a Business Day after 5:00 p.m. (eastern time) at the place of receipt, then on the following Business Day) or, if mailed, on the third Business Day following the date of mailing.

(c) Any Parties may at any time change its address for service from time to time by giving notice to the other Parties in accordance with this Section 5.1.

6.2 Fees and Expenses

Each Party shall pay the fees and expenses of its advisers, counsel, accountants and other experts, if any, and all other expenses incurred by such party incident to the negotiation, preparation, execution, delivery and performance of this Agreement.

6.3 Termination

This Agreement shall terminate, become null and void, and shall have no further force or effect immediately as of and following the earliest of (i) the redemption of the Special Voting Shares by the Company on the Redemption Date in accordance with Section 3.3 hereof and the Certificate of Designation, (ii) the date on which the Company delivers written notice to the Holder of its intent to terminate this Agreement (or such later date specified in such notice) and (iii) June 27, 2023. Notwithstanding anything else contained herein, (a) this Article 6 and Section 3.5 shall survive termination, and (b) such termination shall not relieve any Party from liability for any material breach of this Agreement by the Party prior to such termination.

6.4 Amendments and Waivers

No amendment or waiver of any provision of this Agreement shall be binding on any Parties unless consented to in writing by such Party. No waiver of any provision of this Agreement shall constitute a waiver of any other provision, nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

6.5 Assignment

No Party may assign any of its rights or benefits under this Agreement, or delegate any of its duties or obligations, except with the prior written consent of the other Party.

6.6 Successors and Assigns

This Agreement shall inure to the benefit of and shall be binding on and enforceable by and against the Parties and their respective successors or heirs, executors, administrators and other legal personal representatives, and permitted assigns.

6.7 Specific Performance

The Company and the Holder hereby agree that irreparable damage for which monetary damages, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached. Accordingly, the Company and the Holder agree that, prior to the valid termination of this Agreement in accordance with Section 6.3, the Company shall be entitled to an injunction or injunctions, or any other appropriate form of specific performance or equitable relief, to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled under the terms of this Agreement, at law or in equity (and the Holder hereby waives any requirement for the securing or posting of any bond in connection with such remedy).

6.8 Governing Law; Venue

THIS AGREEMENT, AND ALL MATTERS ARISING OUT OF OR RELATING TO THIS AGREEMENT, including (a) its negotiation, execution and validity and (b) any action or proceeding, whether at law or in equity, whether in contract, tort or otherwise (including any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO any laws, rules or provisions of the State of Delaware that would cause the application of the laws, rules or provisions of any jurisdiction other than the State of Delaware. Any action or proceeding against any Party arising out of or relating to this Agreement or the transactions contemplated hereby shall be brought exclusively in the Court of Chancery of the State of Delaware or, if, and only if, the Court of Chancery of the State of Delaware does not have subject matter jurisdiction, the Superior Court of the State of Delaware, or, if, and only if, the Superior Court of the State of Delaware does not have subject matter jurisdiction, the United States District Court for the District of Delaware, and each Party hereby irrevocably and unconditionally consents and submits to the exclusive jurisdiction of such courts in any such action or proceeding. Each Party irrevocably waives and agrees not to raise any objection it might now or hereafter have that it is not subject personally to the jurisdiction of the above-named courts, that any such action or proceeding is located in an inconvenient forum, that the venue of the action or proceeding is improper, or that this Agreement or the transactions contemplated hereby may not be enforced in or by the above-named courts. Each Party agrees that such party will not bring any action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby in any court other than the above-named courts. Each Party irrevocably consents to process being served by any Party in any Proceeding by delivery of a copy thereof in accordance with the provisions of Section 5.1 and agrees that nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by applicable Legal Requirements.

6.9 Waiver of Jury Trial

EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES OF FACT AND LAW, AND THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE NEGOTIATION, OR ENTERING INTO OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (A) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (B) EACH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (C) EACH PARTY MAKES THIS WAIVER VOLUNTARILY, AND (D) EACH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 5.9.

6.10 Further Assurances

Each of the Parties hereto shall, from time to time hereafter and upon any reasonable request of the other, promptly do, execute, deliver or cause to be done, executed and delivered all further acts, documents and things as may be required or necessary for the purposes of giving effect to this Agreement.

6.11 Severability

If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, all other provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Parties hereto. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in an acceptable manner to the end that transactions contemplated hereby are fulfilled to the extent possible.

6.12 Counterparts

This Agreement and all documents contemplated by or delivered under or in connection with this Agreement may be executed and delivered in any number of counterparts, with the same effect as if all Parties had signed and delivered the same document, and all counterparts shall be construed together to be an original and will constitute one and the same agreement.

IN WITNESS WHEREOF this Agreement has been executed by the Parties.

EXELA TECHNOLOGIES, INC.

By: /s/ Erik Mengwall

Name: Erik Mengwall

Title: Secretary

GP-HGM LLC

By: /s/ Par Chadha

Name: Par Chadha

Title: Manager

Signature Page — Subscription, Voting and Redemption Agreement
