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

**FORM 8-K
CURRENT REPORT**

PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): September 2, 2015

ABM INDUSTRIES INCORPORATED
(Exact Name of Registrant as Specified in Its Charter)

Delaware
(State or Other Jurisdiction
of Incorporation)

1-8929
(Commission File Number)

94-1369354
(IRS Employer
Identification No.)

551 Fifth Avenue, Suite 300
New York, New York
(Address of Principal Executive Offices)

10176
(Zip Code)

Registrant's Telephone Number, Including Area Code: (212) 297-0200
N/A

(Former Name or Former Address, if Changed Since Last Report)

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

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
 - Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
 - Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
 - Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 1.01. Entry into a Material Definitive Agreement.

Amendment to Form of Indemnification Agreement

Effective September 2, 2015, the Board of Directors (the “Board”) of ABM Industries Incorporated, a Delaware corporation (the “Company” or “ABM”), approved an amended and restated form of director’s indemnification agreement. In addition to clarifying the distinction between indemnification and advancement of expenses, many of the revisions to the amended form of indemnification agreement are to conform the Company’s prior form of indemnification agreement to the indemnification provisions of the Company’s bylaws, which were amended and restated, effective as of September 2, 2015 (as amended and restated, the “Bylaws”) and to the provisions contained in Section 145 of the Delaware General Corporation Law (the “DGCL”), including, but not limited to, those referenced above. The foregoing description of the amended form of indemnification agreement does not purport to be complete and is qualified in its entirety by reference to the complete text of the amended form of director’s indemnification agreement, a copy of which is attached to this Current Report on Form 8-K as Exhibit 10.1 and incorporated by reference herein in this Item 1.01.

Item 5.03. Amendments to Articles of Incorporation or Bylaws.

On September 2, 2015, the Company’s Board, upon the recommendation of the Board’s Governance Committee, approved amendments to amend and restate the Company’s Bylaws, effective as of September 2, 2015. Among other things, the revisions to the Bylaws:

- Incorporate current provisions of the DGCL, such as provisions relating to electronic transmissions and communications, including permitting the participation by directors and stockholders in meetings by means of remote communications and permitting electronic notices.
- Conform the Bylaws to provisions already included in the Restated Certificate of Incorporation, including, but not limited to, the provisions relating to special meetings and amendments to the Bylaws.
- Revise the provisions related to the advance notice of stockholder proposals, including, but not limited to, revisions to:
 - o Further specify the information required to be provided by stockholders in their advance notice of stockholder proposals, including, but not limited to, information about the stockholder and associated persons, including their ownership, direct and indirect, in the Company’s securities, including any derivative interests and any agreements with respect thereto, and information about the business proposed;
 - o Add a requirement for the proposing stockholder to update and supplement the information provided by stockholders in their advance notice of stockholder proposals;
 - o Remove the requirement that a stockholder needs to be a record holder of shares of the Company in order to bring business before a meeting and replace it with the requirement that the stockholder only needs to be a beneficial owner of shares of the Company;
 - o Include the concept of a “Proposing Person” to encapsulate all the persons and entities for which information needs to be provided in an advance notice of proposed business and define “Proposing Person” to mean (a) the stockholder providing the notice of business proposed to be brought before the meeting, (b) the beneficial owner or beneficial owners, if any, on whose behalf the notice of the business proposed to be

brought before the meeting is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner in such solicitation of proxies in respect of any such proposed business, (d) any Affiliate of such stockholder (within the meaning of Rule 12b-2 under the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder (the "Exchange Act")) or beneficial owner, and (e) any person controlling, controlled by or under common control with any person referred to in the preceding clauses (a) and (b);

- o Specify the agreements, arrangements and understandings, written and oral, (a) between or among any Proposing Persons or (b) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by a stockholder, that are required to be disclosed in a stockholder's advance notice of business to be brought before a stockholders' meeting;
- o Clarify certain procedural matters relating to the proposal of business by a stockholder including, but not limited to, the prerequisites for a stockholder to bring business before a stockholders' meeting including, but not limited to, the requirement that such stockholder (a) be a beneficial owner of shares of the Company at the time of giving the advance notice of stockholder proposal, on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and at the time of the annual meeting, (b) be entitled to vote at such annual meeting, and (c) comply with the advance notice procedures set forth in the Bylaws in all applicable respects;
- o Provide that the stockholder or a qualified representative of such stockholder must be present in person at a stockholders' meeting in order for a stockholder proposal to be brought before the meeting; and
- o Provide that if the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date of the immediately preceding annual meeting of stockholders, an advance notice of proposed business by a stockholder to be timely must be delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the 10th day following the day on which public disclosure of the date of such annual meeting was first made.

· Revise the provisions related to the advance notice of director nominations, including, but not limited to, revisions to:

- o Further specify the information required to be provided by stockholders in their advance notice of nominations of candidates for election to the Board, including, but not limited to, information about the stockholder and associated persons, including their ownership, direct and indirect, in the Company's securities, including any derivative interests and any agreements with respect thereto, and information about the person(s) being nominated;
- o Add a requirement for the nominating stockholder to update and supplement the information provided by stockholders in their advance notice of director nominations;
- o Remove the requirement that a stockholder needs to be a record holder of shares of the Company in order to bring a director nomination before a meeting and replace it with the requirement that the stockholder only needs to be a beneficial owner of shares of the Company;
- o Include the concept of a "Nominating Person" to encapsulate all the persons and entities for which information needs to be provided in an advance notice of director nomination and define "Nominating Person" to mean (a) the stockholder providing the notice of director nomination to be brought before the meeting, (b) the beneficial owner or beneficial owners, if any, on whose behalf the notice of the director nomination proposed to be brought before the meeting is made, (c) any participant (as defined in

paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner in such solicitation of proxies in respect of any such proposed nomination, (d) any Affiliate of such stockholder (within the meaning of Rule 12b-2 under the Exchange Act) or beneficial owner, and (e) any person controlling, controlled by or under common control with any person referred to in the preceding clauses (a) and (b);

- o Specify the agreements, arrangements and understandings, written and oral, (a) between or among any Nominating Persons or (b) between or among any Nominating Person and any other person or entity (including their names) in connection with the proposal of a director nomination by a stockholder, that are required to be disclosed in a stockholder's advance notice of director nominations to be brought before a stockholders' meeting;
 - o Clarify certain procedural matters relating to the proposal of a director nomination by a stockholder including, but not limited to, the prerequisites for a stockholder to bring a director nomination before a stockholders' meeting including, but not limited to, the requirement that such stockholder (a) be a beneficial owner of shares of the Company at the time of giving the advance notice of a proposed director nomination, on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and at the time of the annual meeting, (b) be entitled to vote at such annual meeting, and (c) comply with the advance notice procedures set forth in the Bylaws in all applicable respects;
 - o Provide that the stockholder or a qualified representative of such stockholder must be present in person at a stockholders' meeting in order for a director nomination proposal to be brought before the meeting; and
 - o Provide that if the date of the annual meeting is more than 30 days before or more than 60 days after the anniversary date of the immediately preceding annual meeting of stockholders, an advance notice of a proposed director nomination by a stockholder to be timely must be delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the 10th day following the day on which public disclosure of the date of such annual meeting was first made.
- Provide more detailed procedural provisions with respect to stockholders' meetings, including, but not limited to, the conduct of the meeting, meeting protocol, the retention of inspectors of election for such meetings, proxies for such meetings, the availability of a stockholder list and postponement and cancellation of such meetings.
 - Add several general provisions, such as provisions regarding books and records, notice, including electronic notice, and waiver of notice.
 - Add provisions relating to the stock of the Company, including provisions relating to registered stockholders, record dates and fractional shares.
 - Add a provision indicating that the provisions of the Bylaws shall be construed as supplemental and additional to all provisions of applicable law.
 - Add a provision indicating that if a provision of the Bylaws is found to be inconsistent with applicable law, it will not affect the validity of other provisions of the Bylaws.
 - Clarify that the indemnification that the Company provides to its directors, officers and other agents is to the fullest extent permitted by applicable law except as specifically limited by the

Restated Certificate of Incorporation or the Bylaws. In connection with such amendments, provisions have been added to the Bylaws to specify in further detail what is meant by indemnified proceedings, reimbursable expenses, actions in an official capacity and actions at the request of the Company. In addition, the rights granted to indemnified persons to be advanced expenses incurred in defending a proceeding in advance of its final disposition have also been clarified to provide a specific time period by which the advancement needs to be made and to provide that the Company cannot impose on the indemnified person any conditions to the advancement of expenses or require from the indemnified person any undertakings regarding repayment other than the statutorily required undertaking by or on behalf of the indemnified person to repay such amounts advanced if it shall ultimately be determined that he or she is not entitled to be indemnified by the Company. Further, provisions were added to the Bylaws to indicate that the Company is not obligated to indemnify any person in connection with any proceeding under the enumerated circumstances described in the Bylaws. Other provisions provide a process for the Company's Board to determine that indemnification is proper in a particular circumstance in accordance with applicable law, including the provisions contained in Section 145 of the DGCL, provide that the indemnification provided by the Bylaws is not exclusive of other indemnification that may be provided to the director or officer, authorize the Company to procure director and officer liability insurance and provide that the conduct of one indemnified person will not be imputed to another.

In addition to the foregoing, there are various other "clean-up" changes to the Bylaws including, but not limited to, grammatical and other typographical corrections, formatting changes, revisions to headings, titles and captions, capitalization of defined terms, changes to conform the Bylaws to the provisions of the DGCL and the inclusion of specific references to the DGCL and the Restated Certificate of Incorporation.

The foregoing description of various amendments included in the Bylaws does not purport to be complete and is qualified in its entirety by reference to the complete text of the Bylaws, a copy of which is attached to this Current Report on Form 8-K as Exhibit 3.1 and incorporated by reference in this Item 5.03 in its entirety.

Item 8.01 Other Events.

Bylaws Advance Notice Deadline for Submission of Stockholder Proposals and Director Nominations

To be considered timely, stockholder proposals submitted outside of Rule 14a-8 of the Exchange Act and director nominations, in each case intended to be brought before the Company's 2016 Annual Meeting of Stockholders (the "2016 Annual Meeting"), must be received by the Company's Corporate Secretary by December 5, 2015, and must be directed to the Corporate Secretary, ABM Industries Incorporated, 551 Fifth Avenue, Suite 300, New York, New York 10176. Such proposals and nominations must also comply with the advance notice provisions contained in Sections 2.5 and 3.7 of the Bylaws and stockholders are urged to read the complete text of such advance notice provisions.

In addition, if any stockholder notifies the Company after December 5, 2015 of an intention to present business at the 2016 Annual Meeting, the Company's proxy holders will have the right to exercise discretionary voting authority with respect to that proposal, if presented at the 2016 Annual Meeting, without the Company including information regarding the proposal in its proxy materials, subject to compliance with Rule 14a-4(c) of the Exchange Act.

The foregoing summary of the advance notice provisions contained in the Bylaws does not purport to be complete and is qualified in its entirety by reference to the complete text of the Bylaws adopted by

the Board on September 2, 2015, attached hereto as Exhibit 3.1 and incorporated by reference herein in its entirety.

Rule 14a-8 Deadline for the Submission of Stockholder Proposals

Pursuant to Rule 14a-8 under the Exchange Act, the deadline for the receipt of any stockholder proposals submitted pursuant to Rule 14a-8 of the Exchange Act for inclusion in the Company's proxy materials for the 2016 Annual Meeting is the close of business on October 7, 2015. Such proposals should be delivered to the Company's Corporate Secretary at the address noted above. Such proposals also need to comply with the rules of the Securities and Exchange Commission regarding the inclusion of stockholder proposals in the Company's proxy materials, and may be omitted if not in compliance with applicable requirements.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
3.1	Amended and Restated Bylaws of ABM Industries Incorporated, as adopted by the Board of Directors on September 2, 2015
10.1	Form of Director's Indemnification Agreement

SIGNATURES

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

ABM INDUSTRIES INCORPORATED

(Registrant)

Date: September 4, 2015

/s/ Sarah H. McConnell

Sarah H. McConnell

Executive Vice President and General Counsel

EXHIBIT INDEX

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ABM INDUSTRIES INCORPORATED

AMENDED AND RESTATED BYLAWS

As adopted on and with effect from September 2, 2015

TABLE OF CONTENTS

	Page	
ARTICLE I	OFFICES	1
Section 1.1.	Registered Office	1
Section 1.2.	Principal Office	1
Section 1.3.	Other Offices	1
ARTICLE II	MEETINGS OF STOCKHOLDERS	1
Section 2.1.	Place of Meeting	1
Section 2.2.	Participation in Meetings by Remote Communication	1
Section 2.3.	Annual Meeting	2
Section 2.4.	Notice of Stockholder Meetings	2
Section 2.5.	Business at Annual Meetings	2
Section 2.6.	Special Meetings	7
Section 2.7.	List of Stockholders	7
Section 2.8.	Conduct of Meetings	7
Section 2.9.	Inspectors	8
Section 2.10.	Presiding Officer and Secretary	8
Section 2.11.	Adjourned Meetings and Notice	9
Section 2.12.	Quorum	9
Section 2.13.	Voting	9
Section 2.14.	Proxies	10
Section 2.15.	Confidential Voting	10
Section 2.16.	Inspector's Reports on Voting	10
Section 2.17.	Postponement and Cancellation of Meetings	11
Section 2.18.	Waiver of Notice	11
ARTICLE III	DIRECTORS	11
Section 3.1.	Number of Directors, Election and Term of Office	11
Section 3.2.	Vacancies	11
Section 3.3.	Powers	11
Section 3.4.	The Chairman of the Board of Directors	11
Section 3.5.	Compensation of Directors	12
Section 3.6.	Resignation	12

TABLE OF CONTENTS
(continued)

	Page
Section 3.7. Nominations of Directors	12
ARTICLE IV MEETINGS OF THE BOARD OF DIRECTORS	15
Section 4.1. Place of Meeting	15
Section 4.2. Organization Meeting	15
Section 4.3. Regular Meetings	15
Section 4.4. Special Meetings	15
Section 4.5. Notice of Special Meetings	15
Section 4.6. Waiver of Notice	15
Section 4.7. Quorum	16
Section 4.8. Adjournment	16
Section 4.9. Action Without a Meeting	16
ARTICLE V COMMITTEES OF DIRECTORS	16
Section 5.1. Committees of Directors	16
Section 5.2. Quorum	16
Section 5.3. Committee Minutes	17
Section 5.4. Termination of Committee Membership	17
Section 5.5. Audit Committee	17
Section 5.6. Compensation Committee	17
Section 5.7. Governance Committee	17
ARTICLE VI OFFICERS	17
Section 6.1. Officers	17
Section 6.2. Election	17
Section 6.3. Other Officers	18
Section 6.4. Term	18
Section 6.5. The President	18
Section 6.6. Vice Presidents	18
Section 6.7. Chief Financial Officer	18
Section 6.8. The Secretary	18
Section 6.9. The Controller	19
Section 6.10. The Treasurer	19

TABLE OF CONTENTS
(continued)

	Page	
ARTICLE VII	INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS	19
Section 7.1.	Actions, Suits or Proceedings Other Than by or in the Right of the Corporation	19
Section 7.2.	Actions or Suits by or in the Right of the Corporation	19
Section 7.3.	Indemnification for Expenses of Successful Party	20
Section 7.4.	Indemnification of Others	20
Section 7.5.	Advance of Costs, Charges and Expenses	20
Section 7.6.	Limitations on Indemnification	21
Section 7.7.	Procedure for Indemnification; Determination	22
Section 7.8.	Procedures For The Determination of Whether Standards Have Been Satisfied	23
Section 7.9.	Non-exclusivity of Rights	23
Section 7.10.	Continuation of Rights	24
Section 7.11.	Contract Rights	24
Section 7.12.	Subrogation	24
Section 7.13.	No Duplication of Payments	24
Section 7.14.	Insurance and Funding	24
Section 7.15.	No Imputation	25
Section 7.16.	Reliance	25
Section 7.17.	Severability	25
Section 7.18.	Notices	25
Section 7.19.	Certain Definitions	25
ARTICLE VIII	GENERAL PROVISIONS	27
Section 8.1.	Fiscal Year	27
Section 8.2.	Seal	27
Section 8.3.	Books and Records	27
Section 8.4.	Notice to Stockholders by Electronic Transmission	27
Section 8.5.	Notice to Stockholders Sharing an Address	27
Section 8.6.	Waiver of Notice	28
Section 8.7.	Section Headings	28

TABLE OF CONTENTS
(continued)

	Page
Section 8.8. Gender	28
Section 8.9. Time Periods	28
Section 8.10. Evidence of Authority	28
Section 8.11. Certificate of Incorporation	28
Section 8.12. Bylaw Provisions Additional and Supplemental to Provisions of Law	29
Section 8.13. Interpretation	29
Section 8.14. Inconsistent Provisions	29
Section 8.15. Notices	29
ARTICLE IX STOCK	29
Section 9.1. Shares of Stock	29
Section 9.2. Signatures	29
Section 9.3. Registered Stockholders	29
Section 9.4. Lost Certificates	30
Section 9.5. Transfers	30
Section 9.6. Record Date	30
Section 9.7. Record Owners	31
Section 9.8. Transfer and Registry Agents	31
Section 9.9. Fractional Shares	31
ARTICLE X AMENDMENTS	31
Section 10.1. Amendments	31

ABM INDUSTRIES INCORPORATED

AMENDED AND RESTATED BYLAWS

As adopted on and with effect from September 2, 2015

**ARTICLE I
OFFICES**

Section 1.1. Registered Office. The registered office of ABM Industries Incorporated (the "Corporation") shall be located in the City of Wilmington, County of New Castle, State of Delaware.

Section 1.2. Principal Office. The principal office for the transaction of the business of the Corporation shall be at such place as the Board of Directors of the Corporation (the "Board of Directors" or the "Board") may determine. The Board is hereby granted full power and authority to change said principal office from one location to another.

Section 1.3. Other Offices. The Corporation may also have offices at such other places both within and without the State of Delaware as the Board may from time to time determine or the business of the Corporation may require.

**ARTICLE II
MEETINGS OF STOCKHOLDERS**

Section 2.1. Place of Meeting. All meetings of stockholders shall be held at the principal executive office of the Corporation or at any other place, either within or without the State of Delaware, as may be designated by resolution of the Board of Directors adopted by a majority of the Board of Directors then in office (the total number of directors then in office being hereinafter referred to in these Bylaws as the "Full Board"). The Board may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication as provided under the General Corporation Law of the State of Delaware, as amended from time to time (the "DGCL").

Section 2.2. Participation in Meetings by Remote Communication. The Board, acting in its sole discretion, may, by resolution adopted by a majority of the Full Board, establish guidelines and procedures in accordance with applicable provisions of the DGCL and any other applicable law for the participation by stockholders and proxyholders in a meeting of stockholders by means of remote communications, and may determine that any meeting of stockholders will not be held at any place but will be held solely by means of remote communication. Stockholders and proxyholders complying with such procedures and guidelines and otherwise entitled to vote at a meeting of stockholders shall be deemed present in person and entitled to vote at a meeting of stockholders, whether such meeting is to be held at a designated place or solely by means of remote communication.

Section 2.3. Annual Meeting. The annual meeting of stockholders shall be held on such date and at such time as the Board of Directors may designate by resolution adopted by a majority of the Full Board. At each annual meeting the stockholders shall elect directors to succeed those whose terms expire in that year and to serve until their successors are duly elected and qualified, and shall transact such other business as may properly be brought before the meeting as set forth in these Bylaws and the DGCL.

Section 2.4. Notice of Stockholder Meetings. Written notice of an annual or special meeting shall be given to each stockholder of record of each class of stock of the Corporation then outstanding and entitled to vote, not less than ten nor more than sixty days prior to the meeting. Such notice shall state the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. If mailed, such notice shall be deemed to be given when deposited in the mail, postage pre-paid, directed to the stockholder at his or her address as it appears on the records of the Corporation. An affidavit of the Secretary of the Corporation, or Assistant Secretary of the Corporation, or of the transfer agent or other agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein. Notice given by electronic transmission shall only be valid if it complies with Section 232 of the DGCL and Section 8.4 of these Bylaws.

Section 2.5. Business at Annual Meetings. At an annual meeting of stockholders, only such business (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 3.7) shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be (a) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors (or any duly authorized committee thereof), (b) if not specified in the notice of meeting (or other supplement thereto) provided at the direction of the Board of Directors, otherwise properly brought before the meeting by or at the direction of the Board of Directors (or any duly authorized committee of the Board of Directors) or the Chairman of the Board, or (c) otherwise properly brought before the meeting by any stockholder of the Corporation present in person who: (i) was a beneficial owner of shares of the Corporation at the time of giving the notice provided for in this Section 2.5, on the record date for the determination of stockholders entitled to notice of and to vote at the annual meeting and at the time of the annual meeting, (ii) is entitled to vote at such annual meeting and (iii) who complies with the notice procedures set forth in this Section 2.5 in all applicable respects. For the avoidance of doubt, except for proposals properly made in accordance with Rule 14a-8 (and interpretations thereunder) promulgated under the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (the "Exchange Act"), and included in the notice of meeting given by or at the direction of the Board of Directors, clause (c) above shall be the exclusive means for a stockholder to bring business before an annual meeting of stockholders. For purposes of this Section 2.5, "present in person" shall mean that the stockholder proposing that the business be brought before the annual meeting of the Corporation, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, appear at such annual meeting. For purposes of these Bylaws, a "qualified representative" of a stockholder shall be, (a) if such stockholder is a general or limited partnership, any general partner or person who functions as a general partner of the general or limited partnership or who controls the general or limited partnership, (b) if such stockholder is a corporation or a limited liability company, any officer or person who functions as an officer of the corporation or limited liability company or any officer, director,

general partner or person who functions as an officer, director or general partner of any entity ultimately in control of the corporation or limited liability company or (c) if such stockholder is a trust, any trustee of such trust. Stockholders seeking to nominate persons for election to the Board of Directors must comply with Section 3.7, and this Section 2.5 shall not be applicable to such nominations except as expressly provided in Section 3.7.

(a) Without qualification, for business to be properly brought before an annual meeting by a stockholder (other than nominations for election to the Board of Directors, which must comply with the provisions of Section 3.7), the stockholder must have given: (a) Timely Notice (as defined below) in proper written form to the Secretary of the Corporation and (b) provide any updates or supplements to such notice at the times and in the forms required by this Section 2.5.

(b) To be timely, a stockholder's notice to the Secretary must be delivered to, or be mailed and received at, the principal executive offices of the Corporation (i) in the case of an annual meeting, not less than 90 days nor more than 120 days prior to the anniversary date of the immediately preceding annual meeting of stockholders; provided, however, that if the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, notice by the stockholder to be timely must be so delivered, or mailed and received, not later than the 90th day prior to such annual meeting or, if later, the 10th day following the day on which public disclosure of the date of such annual meeting was first made and (ii) in the case of a special meeting called for the purpose of electing directors, not later than the 120th day prior to such special meeting and not earlier than the 90th day prior to such special meeting or, if later, the 10th day following the day on which public disclosure of the date of such special meeting was first made (a written notice satisfying the time period requirements of this Section 2.5(b) for an annual meeting or special meeting, as applicable, is referred to as a "Timely Notice"). In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

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

(i) As to each Proposing Person (as defined below), (A) the name and address of such Proposing Person (including, if applicable, the name and address that appear on the Corporation's books and records), (B) the class or series and number of shares of the Corporation that are, directly or indirectly, owned of record or beneficially owned (within the meaning of Rule 13d-3 under the Exchange Act) by such Proposing Person, except that such Proposing Person shall in all events be deemed to beneficially own any shares of any class or series of the Corporation as to which such Proposing Person has a right to acquire beneficial ownership at any time in the future, (C) a representation that the stockholder intends to appear in person or by qualified representative at the meeting to propose the business described in the Timely Notice, (D) a representation as to whether the stockholder intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve the proposed business described in the Timely Notice and/or (2) otherwise to solicit proxies from stockholders

in support of such proposed business (the disclosures to be made pursuant to the foregoing clauses (A), (B), (C) and (D) are referred to as “Stockholder Information”);

(ii) As to each Proposing Person, (A) the full notional amount of any securities that, directly or indirectly, underlie any “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a “call equivalent position” (as such term is defined in Rule 16a-1(b) under the Exchange Act) (together, a “Synthetic Equity Position”) and that is, directly or indirectly, held or maintained by such Proposing Person with respect to any shares of any class or series of shares of the Corporation and a description of any agreement, arrangement or understanding (including any short position or any borrowing or lending of shares of stock) that has been made by or on behalf of such Proposing Person, the effect or intent of any of the foregoing being to mitigate loss to, or to manage risk of stock price changes for, any Proposing Person or to increase the voting power or pecuniary or economic interest of such Proposing Person with respect to stock of the Corporation; provided that, for the purposes of the definition of “Synthetic Equity Position,” the term “derivative security” shall also include any security or instrument that would not otherwise constitute a “derivative security” (as such term is defined in Rule 16a-1(c) under the Exchange Act) as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such determination; and, provided, further, that any Proposing Person satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a Proposing Person that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be deemed to hold or maintain the notional amount of any securities that underlie a Synthetic Equity Position held by such Proposing Person as a hedge with respect to a bona fide derivatives trade or position of such Proposing Person arising in the ordinary course of such Proposing Person’s business as a derivatives dealer, (B) any rights to dividends on the shares of any class or series of shares of the Corporation owned beneficially by such Proposing Person that are separated or separable from the underlying shares of the Corporation, (C) any material pending or threatened legal proceeding in which such Proposing Person is a party or material participant involving the Corporation or any of its officers or directors, or any affiliate of the Corporation, (D) any other material relationship between such Proposing Person, on the one hand, and the Corporation, any affiliate of the Corporation or any significant competitor of the Corporation, on the other hand, (E) any direct or indirect material interest in any material contract or agreement of such Proposing Person with the Corporation, any affiliate of the Corporation or any significant competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) and (F) any other information relating to such Proposing Person that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitation of proxies or consents by such Proposing Person in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder (the disclosures to be made pursuant to the foregoing clauses (A)

through (F) are referred to as “Disclosable Interests”); provided, however, that Disclosable Interests shall not include any such disclosures with respect to the ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner; and

(iii) As to each item of business that the stockholder proposes to bring before the annual meeting: (A) a brief description of the business proposed to be brought before the annual meeting, the reasons for conducting such business at the annual meeting and any material interest in such business of each Proposing Person including any anticipated benefit to the stockholder or any other Proposing Person therefrom, (B) the text of the proposed business (including the text of any resolutions proposed for consideration), (C) a reasonably detailed description of all agreements, arrangements and understandings (1) between or among any of the Proposing Persons or (2) between or among any Proposing Person and any other person or entity (including their names) in connection with the proposal of such business by such stockholder, including without limitation any agreements that would be required to be disclosed by any Proposing Person or any other person or entity pursuant to Item 5 or Item 6 of a Schedule 13D that would be filed pursuant to the Exchange Act and the rules and regulations promulgated thereunder (regardless of whether the requirement to file a Schedule 13D is applicable to the Proposing Person or other person or entity), and (D) any other information relating to such item of business that would be required to be disclosed in a proxy statement or other filing required to be made in connection with the solicitations of proxies in support of the business proposed to be brought before the meeting pursuant to Section 14(a) of the Exchange Act; provided, however, that the disclosures required by this subsection (iii) shall not include any disclosures with respect to any broker, dealer, commercial bank, trust company or other nominee who is a Proposing Person solely as a result of being the stockholder directed to prepare and submit the notice required by these Bylaws on behalf of a beneficial owner.

For purposes of this Section 2.5, the term “Proposing Person” shall mean (a) the stockholder providing the notice of business proposed to be brought before an annual meeting, (b) the beneficial owner or beneficial owners, if any, on whose behalf the notice of the business proposed to be brought before the annual meeting is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner in such solicitation of proxies in respect of any such proposed business, (d) any Affiliate of such stockholder (within the meaning of Rule 12b-2 under the Exchange Act and the rules and regulations promulgated thereunder) or beneficial owner, and (e) any person controlling, controlled by or under common control with any person referred to in the preceding clauses (a) and (b).

(d) A Proposing Person shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 2.5 shall be true and correct as of (i) the record date for the determination of persons entitled to receive notice of the meeting and (ii) the date that is 5 business days prior to the meeting and, in the event of any adjournment or

postponement thereof, 5 business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) of this Section, such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than 2 business days after the record date for the determination of persons entitled to receive notice of the meeting. In the case of an update and supplement pursuant to clause (ii) of this Section, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than 2 business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, 2 business days prior to such adjourned or postponed meeting. For purposes of these Bylaws, the term "business day" shall mean any day that is not a Saturday or Sunday, a Federal or state legal holiday in the state of the Corporation's principal place of business, or a day on which banks in the city of the Corporation's principal place of business are required or permitted to close.

(e) Notwithstanding anything in these Bylaws to the contrary (other than the provisions of Section 2.5(g) below relating to any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the proxy statement and other than nominations for election to the Board of Directors which must comply with the provisions of Section 3.7 hereof), no business shall be conducted at an annual meeting that is not properly brought before the meeting in accordance with this Section 2.5. The presiding officer of the meeting may, if the facts warrant, determine that the business was not properly brought before the meeting in accordance with this Section 2.5, and if he or she should so determine, he or she shall so declare to the meeting and any such business not properly brought before the meeting shall not be transacted. In addition, business proposed to be brought by a stockholder may not be brought before the annual meeting if such stockholder takes action contrary to the representations made in the stockholder notice applicable to such business or if the stockholder notice applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading.

(f) Notwithstanding any notice of the annual meeting sent to stockholders on behalf of the Corporation, a stockholder must comply with this Section 2.5 to conduct business at any annual meeting. If the stockholder's proposed business is the same or relates to business brought by the Corporation and included in its annual meeting notice, the stockholder is nevertheless required to comply and give its own separate and Timely Notice to the Secretary pursuant to this Section 2.5.

(g) This Section 2.5 is expressly intended to apply to any business proposed to be brought before an annual meeting of stockholders other than any proposal made in accordance with Rule 14a-8 under the Exchange Act and included in the Corporation's proxy statement. In addition to the requirements of this Section 2.5 with respect to any business proposed to be brought before an annual meeting, each Proposing Person shall comply with all applicable requirements of the Exchange Act with respect to any such business. Nothing in this Section 2.5 shall be deemed to affect any rights of (i) a stockholder to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act or (ii) the Corporation to omit a proposal from the Corporation's proxy statement pursuant to Rule 14a-8 (or any successor provision) under the Exchange Act.

(h) For purposes of these Bylaws, “public disclosure” shall mean disclosure (i) in a press release issued through a national news or wire service, (ii) in a document publicly filed by the Corporation with the Securities and Exchange Commission (the “SEC”) pursuant to Sections 13, 14 or 15(d) of the Exchange Act or the rules and regulations thereunder, or (iii) another method reasonably intended by the Corporation to achieve broad-based dissemination of the information contained therein.

Section 2.6. Special Meetings. As provided in Article Ninth of the Corporation’s certificate of incorporation (the “Certificate of Incorporation”), special meetings of the stockholders, for any purpose or purposes, may be called at any time by the Board of Directors or by a committee of the Board of Directors that has been duly designated by the Board of Directors and whose power and authority, as provided in a resolution of the Board of Directors, include the power to call such meetings, but such special meetings may not be called by any other person or persons. The business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.7. List of Stockholders. The officer who has charge of the stock ledger of the Corporation shall prepare and make, at least ten days before every meeting of stockholders, a complete list of stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of the stockholder and the number of shares registered in the name of each stockholder; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten days prior to the meeting, at a place within the city where the meeting is to be held, or, if not so specified, at the place where the meeting is to be held, or on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting. If the meeting is to be held at a physical location, then the list shall also be produced and kept at the time and place of the meeting during the entire meeting, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communications, then the list shall 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. The stock ledger shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by this Section 2.7 or the books of the Corporation, or to vote in person or by proxy at any meeting of stockholders.

Section 2.8. Conduct of Meetings. To the maximum extent permitted by applicable law, the Board of Directors shall be entitled to adopt, or in the absence of the Board doing so, the chair of the meeting shall be entitled to prescribe, such rules or regulations for the conduct of meetings of stockholders as it, he or she shall deem appropriate. Such rules, regulations and procedures that the Board or the chairman of any meeting of stockholders may adopt include, without limitation: (a) establishing an agenda for the meeting and the order for the consideration of the items of business on such agenda, (b) restricting admission to the time set for the commencement of the meeting, (c) limiting attendance at the meeting to stockholders of record of the Corporation entitled to vote at the meeting, their duly authorized proxies or other such persons as the

chairman of the meeting may determine, (d) limiting participation at the meeting on any matter to stockholders of record of the Corporation entitled to vote on such matter, their duly authorized proxies or other such persons as the chairman of the meeting may determine to recognize and, as a condition to recognizing any such participant, requiring such participant to provide the chairman of the meeting with evidence of his or her name and affiliation, whether he or she is a stockholder or a proxy for a stockholder, and the class and series and number of shares of each class and series of capital stock of the Corporation which are owned beneficially and/or of record by such stockholder, (e) limiting the time allotted to questions or comments by participants, (f) taking such actions as are necessary or appropriate to maintain order, decorum, safety and security at the meeting, (g) removing any stockholder who refuses to comply with meeting procedures, rules or guidelines as established by the chairman of the meeting, (h) complying with any state and local laws and regulations concerning safety and security and (i) taking such other action as, in the discretion of the chairman of the meeting, is deemed necessary, appropriate or convenient for the proper conduct of the meeting. Unless and to the extent determined by the Board of Directors or the chair of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

Section 2.9. Inspectors. The Board may, in advance of any meeting of stockholders, appoint one or more inspectors to act at such meeting or any adjournment thereof. If any of the inspectors so appointed shall fail to appear or act, the chairman of the meeting may, or if inspectors shall not have been appointed, the chairman of the meeting shall, appoint one or more inspectors. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector at such meeting with strict impartiality and according to the best of his ability. If any of the inspectors are so appointed, the inspectors shall (a) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each, (b) ascertain the number of shares represented at the meeting, (c) ascertain the existence of a quorum, (d) ascertain the validity and effect of proxies, (e) count and tabulate all votes, ballots or consents, (f) determine and retain for a reasonable period a record of the disposition of all challenges made to any determination made by the inspectors, (g) certify the determination of the number of shares represented at the meeting and their count of all votes and ballots, and (h) do such acts as are proper to conduct the election or vote with fairness to all stockholders. On request of the chairman of the meeting, the inspectors shall make a report in writing of any challenge, request or matter determined by them and shall execute a certificate of any fact found by them. No director or candidate for the office of director shall act as an inspector of an election of directors. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of the inspectors. In determining the validity and counting of all proxies and ballots, the inspectors shall act in accordance with applicable law.

Section 2.10. Presiding Officer and Secretary. The Chairman of the Board of Directors, or in the absence of the Chairman, the President, or in their absence, the Vice Chairman, or if no such officer is present, a director designated by the Board, shall call the meetings of the stockholders to order and shall act as the chairman of the meeting and the presiding officer thereof. The Secretary of the Corporation, if present, shall act as secretary of all meetings of the stockholders. In the absence of the Secretary, an Assistant Secretary, if present, shall act as secretary of the meetings of the stockholders. In the absence of the Secretary or any Assistant Secretary, the presiding officer may appoint a person to act as secretary of such meeting.

Section 2.11. Adjourned Meetings and Notice. Any stockholders' meeting, annual or special, whether or not a quorum is present, may be adjourned from time to time to reconvene at the same or some other place by the vote of a majority of the shares represented either in person or by proxy, but in the absence of a quorum, no other business may be transacted at such meeting. In addition, at any meeting of stockholders, the Chairman of the Board or other chairperson of the meeting appointed by a majority of the Full Board to preside at such stockholders' meeting, shall have the power to adjourn the meeting at the request of the Board of Directors if the Board of Directors determines that adjournment is necessary or appropriate to enable stockholders to fully consider information which the Board of Directors determines has not been made sufficiently or timely available to stockholders or is otherwise in the best interests of stockholders. When a stockholders' meeting is adjourned to another time or place, notice of the adjourned meeting need not be given if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjournment meeting, are announced at the meeting at which the adjournment is taken; except that if the adjournment is for more than thirty days or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting shall be given to each stockholder of record entitled to vote. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL and Section 9.6 of these Bylaws, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.12. Quorum. The holders of a majority of the shares issued and outstanding and entitled to vote, present in person, by remote communication, if applicable, or represented by proxy, shall constitute a quorum at all meetings or adjournments thereof of the stockholders for the transaction of business, except as otherwise provided by statute or by the Certificate of Incorporation. The stockholders present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. In the absence of a quorum at any such meeting or any adjournment or adjournments thereof, a majority in voting interest of those present in person or by proxy and entitled to vote thereat, or any officer entitled to preside at, or to act as secretary of, such meeting may adjourn such meeting until stockholders holding the amount of stock requisite for a quorum are present in person or by proxy.

Section 2.13. Voting. Unless otherwise provided in the Certificate of Incorporation, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. All voting, including on the election of directors but excepting where otherwise required by applicable law or the Certificate of Incorporation, may take place via a voice vote. At any meeting of stockholders, the Board of Directors, in its discretion, or the Chairman of the Board or other chairperson of the meeting appointed, pursuant to a resolution adopted by a majority of the Full Board, to preside at such stockholders' meeting may, in his or her discretion, require that any votes cast at a meeting of stockholders shall be cast by written ballot. At all meetings of stockholders for elections or votes for any purpose, there must be a quorum present. When a quorum is present, except as otherwise provided by statute, by applicable stock exchange rules, by the Certificate of Incorporation or these Bylaws, in all matters other than the election of

directors, the affirmative vote of the majority of shares present in person, by remote communication, if applicable, or represented by proxy at the meeting and entitled to vote generally on the subject matter shall be the act of the stockholders. Except as otherwise required by applicable law, the Certificate of Incorporation, these Bylaws or the rules of any applicable stock exchange, directors shall be elected by a plurality of the voting power of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 2.14. Proxies. Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized by an instrument in writing or by a transmission permitted by law filed in accordance with the procedure established for the meeting, but no such proxy shall be voted or acted upon after 3 years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

Section 2.15. Confidential Voting.

(a) Proxies and ballots that identify the votes of specific stockholders shall be kept in absolute confidence by the tabulators and the inspectors of election unless (i) there is an opposing solicitation with respect to the election or removal of directors, (ii) disclosure is required by applicable law, (iii) a stockholder expressly requests or otherwise authorizes disclosure of the vote(s) cast by that stockholder, or (iv) the Corporation concludes in good faith that a bona fide dispute exists as to the authenticity of one or more proxies, ballots or votes, or as to the accuracy of any tabulation of such proxies, ballots or votes. Otherwise, no person, group or entity (including but not limited to any past, present or prospective director, officer, employee, agent or stockholder of the Corporation) shall be shown, told or given any information about the vote(s) cast by any specific stockholder.

(b) Comments written on proxies, consents or ballots shall be transcribed and provided to the Secretary of the Corporation with the name and address of the stockholder. The vote of the stockholder shall not be disclosed at the time any such comment is provided to the Secretary except where such vote is included in the comment or disclosure is necessary, in the opinion of the inspector, for an understanding of the comment.

(c) The tabulators and inspectors of election and any authorized agents or other persons engaged in the receipt, count and tabulation of proxies and ballots shall be advised of this Bylaw and instructed to comply herewith.

(d) The inspectors of election shall certify, to the best of their knowledge based on due inquiry, that proxies and ballots have been kept in confidence as required by this Section 2.15.

Section 2.16. Inspector's Reports on Voting. Nothing in these Bylaws shall prohibit the inspectors from making available to the Corporation, during the period prior to any annual or

special meeting, information as to which stockholders have not voted and periodic status reports on the aggregate vote.

Section 2.17. Postponement and Cancellation of Meetings. Any previously scheduled annual or special meeting of the stockholders may be postponed, and any previously scheduled annual or special meeting of the stockholders called by the Board may be canceled, by resolution adopted by a majority of the Full Board upon public notice given prior to the time previously scheduled for such meeting of stockholders.

Section 2.18. Waiver of Notice. Attendance of a stockholder (or stockholder's proxy) at a meeting shall constitute a waiver of notice of such meeting, except when a stockholder (or stockholder's proxy) objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened; provided, that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by law or these Bylaws to be included in the notice but not so included if such objection is expressly made at the meeting.

ARTICLE III DIRECTORS

Section 3.1. Number of Directors, Election and Term of Office. The number of directors which shall constitute the whole Board shall be not less than eight nor more than eleven, the exact number within such limits to be fixed from time to time by resolution adopted by a majority of the Full Board. No decrease in the number of directors constituting the Board shall shorten the term of any incumbent director. The Board of Directors shall be classified, with respect to the time for which they severally hold office, into three classes, as nearly equal in number as possible, as determined by the Board of Directors, with the members of each class to hold office until their successors are duly elected and qualified. At each annual meeting of stockholders, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders held in the third year following the year of their election.

Section 3.2. Vacancies. If the office of any director becomes vacant for any reason or any new directorship is created by any increase in the authorized number of directors, a majority of the Full Board, although less than a quorum, may choose a successor or successors to fill the vacancy or newly created directorship. Any director so chosen shall hold office until the next election of the class for which he or she was chosen and until his or her successor is duly elected and qualified, unless sooner removed.

Section 3.3. Powers. The business and affairs of the Corporation shall be managed by or under the direction of its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things except as may be otherwise prohibited by the DGCL or by the Certificate of Incorporation.

Section 3.4. The Chairman of the Board of Directors. The Chairman of the Board of Directors shall preside at all meetings of the Board of Directors and stockholders of the Corporation. If an employee of the Corporation, the Chairman shall be an officer of the

Corporation. At the request of the President and Chief Executive Officer, the Chairman shall assist such person in communications with stockholders, the press and the investment community. The Chairman shall exercise and perform such other powers and duties as may, from time to time, be assigned to such person by the Board of Directors or prescribed by these Bylaws. In the absence of the Chairman of the Board, or in the event of such person's inability or refusal to act, the President, if a director of the Corporation, shall perform such duties and exercise such powers. In the absence of the President, or in the event of such person's inability or refusal to act, a director chosen by a majority of the directors present shall perform such duties and exercise such powers.

Section 3.5. Compensation of Directors. The Board of Directors shall have the authority to fix the compensation of directors.

Section 3.6. Resignation. Any director may resign effective upon giving notice in writing upon delivery or by electronic transmission to the Chief Executive Officer, the Secretary of the Corporation, or the Board of Directors of the Corporation, unless the notice specifies a later time for the effectiveness of such resignation. If such notice is given by electronic transmission, such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the director. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.

Section 3.7. Nominations of Directors. Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the right of holders of preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders, or at any special meeting of stockholders (but only if the election of directors is a matter specified in the notice of meeting given by or at the direction of the person calling such special meeting), (a) if not specified in the notice of meeting (or other supplement thereto) provided at the direction of the Board of Directors, including by any committee or persons authorized to do so by the Board of Directors or these Bylaws or (b) by any stockholder of the Corporation present in person: (i) who was a beneficial owner of shares of the Corporation at the time of giving the notice provided for in this Section 3.7, on the record date for the determination of stockholders entitled to notice of and to vote at the meeting and at the time of the meeting, (ii) is entitled to vote at the meeting, and (iii) has delivered a notice of nomination to the Corporation in compliance with this Section 3.7 as to such notice of nomination. For purposes of this Section 3.7, "present in person" shall mean that the stockholder proposing that the business be brought before the meeting of the Corporation, or, if the proposing stockholder is not an individual, a qualified representative (as defined in Section 2.5 hereof) of such stockholder, appear at such meeting. The foregoing clause (b) shall be the exclusive means for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting or special meeting.

(a) Without qualification, for a stockholder to make any nomination of a person or persons for election to the Board of Directors at an annual meeting, the stockholder must (i) provide Timely Notice (as defined in Section 2.5(b) hereof) in writing and in proper form to the Secretary

of the Corporation, (ii) provide the information, agreements and questionnaires with respect to such stockholder and its candidate for nomination as required to be set forth by this Section 3.7 and (iii) provide any updates or supplements to such notice at the times and in the forms required by this Section 3.7.

(b) In no event shall any adjournment or postponement of an annual meeting or special meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above.

(c) Notwithstanding any provision of this Section 3.7 to the contrary, in the event that the number of directors in an Expiring Class (as defined below) is increased and there is no public disclosure of the appointment of a director to such class, or, if no appointment was made, of the vacancy in such class, made by the Corporation at least 10 days before the last day a stockholder may deliver a notice of nomination, a stockholder's notice required by this Section 3.7 and which complies with the requirements in this Section 3.7, other than the timing requirements, shall also be considered timely, but only with respect to nominees for any new positions in such Expiring Class created by such increase, if it shall be received by the Secretary at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public disclosure is first made by the Corporation of the increase in the number of directors in the Expiring Class. For purposes of this section, an "Expiring Class" shall mean a class of directors whose term shall expire at the next annual meeting of stockholders.

(d) To be in proper form for purposes of this Section 3.7, a stockholder's notice to the Secretary shall set forth:

(i) As to each Nominating Person (as defined below), the Stockholder Information (as defined in Section 2.5(c)(i)), except that for purposes of this Section 3.7 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.5(c)(i);

(ii) As to each Nominating Person, any Disclosable Interests (as defined in Section 2.5(c)(ii)), except that for purposes of this Section 3.7 the term "Nominating Person" shall be substituted for the term "Proposing Person" in all places it appears in Section 2.5(c)(ii) and the disclosure with respect to the business to be brought before the meeting in Section 2.5(c)(ii) shall be made with respect to the election of directors at the meeting);

(iii) As to each candidate whom a Nominating Person proposes to nominate for election as a director, (A) all information with respect to such candidate for nomination that would be required to be set forth in a stockholder's notice pursuant to this Section 3.7 if such candidate for nomination were a Nominating Person, (B) all information relating to such candidate for nomination that is required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors in a contested election pursuant to Section 14(a) under the Exchange Act and the rules and regulations promulgated thereunder (including such candidate's written consent to being named in the proxy statement as a nominee and to serving as a director if elected), and (C) a description of any direct or indirect material

interest in any material contract or agreement between or among any Nominating Person, on the one hand, and each candidate for nomination or his or her respective affiliates or associates or any other participants in such solicitation, on the other hand, including, without limitation, all information that would be required to be disclosed pursuant to Item 404 under Regulation S-K if such Nominating Person were the “registrant” for purposes of such rule and the candidate for nomination were a director or executive officer of such registrant (the disclosures to be made pursuant to the foregoing clauses (A) through (C) are referred to as “Nominee Information”).

For purposes of this Section 3.7, the term “Nominating Person” shall mean: (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder or beneficial owner in any solicitation of proxies in respect of any such proposed nomination, (d) any Affiliate of such stockholder (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these Bylaws) or beneficial owner, and (e) any person controlling, controlled by or under common control with any person referred to in the preceding clauses (a) and (b).

(e) A stockholder providing notice of any nomination proposed to be made at a meeting shall further update and supplement such notice, if necessary, so that the information provided or required to be provided in such notice pursuant to this Section 3.7 shall be true and correct as of (i) the record date for the determination of persons entitled to receive notice of the meeting and (ii) the date that is 5 business days prior to the meeting and, in the event of any adjournment or postponement thereof, 5 business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (i) above, such update and supplement shall be received by the Secretary at the principal executive offices of the Corporation not later than 2 business days after the occurrence of any event or development which would cause the information provided to be not true and correct in all material respects. In the case of an update and supplement pursuant to clause (ii) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than 2 business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, 2 business days prior to such adjourned or postponed meeting.

(f) In addition to the requirements of this Section 3.7 with respect to any nomination proposed to be made at a meeting, each Nominating Person shall comply with all applicable requirements of the Exchange Act and DGCL with respect to any such nominations.

(g) No candidate shall be eligible for nomination as a director of the Corporation unless such candidate for nomination and the Nominating Person seeking to place such candidate’s name in nomination have complied with this Section 3.7. The presiding officer at the meeting may, if the facts warrant, determine that a nomination was not properly made in accordance with this Section 3.7, and if he or she should so determine, he or she shall so declare such determination to the meeting, the defective nomination shall be disregarded and any ballots cast for the candidate in question (but in the case of any form of ballot listing other qualified nominees, only the ballots cast for the nominee in question) shall be void and of no force or effect.

(h) Notwithstanding any notice of the annual meeting sent to stockholders on behalf of the Corporation, a stockholder must comply with this Section 3.7 to propose director nominations at any annual meeting.

ARTICLE IV MEETINGS OF THE BOARD OF DIRECTORS

Section 4.1. Place of Meeting. The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 4.2. Organization Meeting. In conjunction with each annual meeting of stockholders, the Board of Directors shall hold a regular meeting for the purpose of organization, electing officers and transacting other business. No notice of such meeting need be given. In the event such meeting is not so held, the meeting may be held at such time and place as shall be specified in a notice given as hereafter provided for special meetings of the Board of Directors.

Section 4.3. Regular Meetings. Regular meetings of the Board of Directors may be held at such time and at such place as shall from time to time be determined by the Board of Directors; provided, however, that if the date so designated falls upon a legal holiday, then the meeting shall be held at the same time and place on the next succeeding day which is not a legal holiday. Such regular meetings may be held without notice; provided, however, that if the Board shall fix or change the time or place of any regular meeting, notice of such action shall be mailed promptly, or given by telephone (including by a voice or text messaging system), facsimile or electronic mail to each director who shall not have been present at the meeting at which such action was taken, directed to each director at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation's records, or shall be delivered to him or her personally.

Section 4.4. Special Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board of Directors, the President or on the written request of any two directors.

Section 4.5. Notice of Special Meetings. Notice of the time and place of special meetings of the Board of Directors shall be delivered to each director by overnight delivery service sent 48 hours before the meeting or by notifying each director of the meeting at least 24 hours prior to the time at that director's address, telephone number, facsimile number or electronic mail address, as the case may be, as shown on the Corporation's records, or shall be delivered to him or her personally. Such notice need not state the purpose of, nor the business to be transacted at, that meeting, except as may otherwise be required by these Bylaws or applicable law. Further, such notice shall not be necessary if appropriate waivers, consents and/or approvals are filed in accordance with Section 4.6 of these Bylaws.

Section 4.6. Waiver of Notice. Notice of a meeting need not be given to any director who signs a waiver of notice, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though transacted at a meeting duly held after regular call and notice if a

quorum is present and if, either before or after the meeting, each of the directors not present signs a written waiver of notice or consent to holding the meeting. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 4.7. Quorum. At all meetings of the Board of Directors, the presence of a majority of the Full Board shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by statute, by the Certificate of Incorporation or by these Bylaws. If a quorum shall not be present at any meeting of the Board of Directors, the directors present may adjourn the meeting without notice other than announcement at the meeting until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 4.8. Adjournment. Any meeting of the Board of Directors, whether or not a quorum is present, may be adjourned to another time and place by the vote of a majority of the directors present. Notice of the time and place of the adjourned meeting need not be given to absent directors if said time and place are fixed at the meeting adjourned.

Section 4.9. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board of Directors or of any committee of the Board may be taken without a meeting, if all members of the Board or committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board or committee.

ARTICLE V COMMITTEES OF DIRECTORS

Section 5.1. Committees of Directors. The Board of Directors may, by resolution adopted by a majority of the Full Board, establish committees of the Board with such powers, duties and rules of procedures as may be provided by the resolutions of the Board establishing such committees. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members of the committee present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors who meets the criteria for membership on such committee to act at the meeting in the place of any such absent or disqualified member.

Section 5.2. Quorum. Unless otherwise provided in a resolution adopted by a majority of the Full Board, at all meetings of committees of the Board, the presence of a majority of the members of the committee shall constitute a quorum for the transaction of business, and the act of a majority of the directors present at any meetings at which there is a quorum shall be the act of the committee, except as may be otherwise specifically provided by statute or by the Certificate of Incorporation. If a quorum shall not be present at any meeting of a committee of the Board, the directors present may adjourn the meeting without notice other than

announcement at the meeting until a quorum shall be present. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting.

Section 5.3. Committee Minutes. Each committee shall keep minutes of its meetings and report the same to the Board of Directors.

Section 5.4. Termination of Committee Membership. In the event any person shall cease to be a director of the Corporation, such person shall simultaneously therewith cease to be a member of any committee appointed by the Board of Directors.

Section 5.5. Audit Committee. There shall be an Audit Committee of the Board of Directors that shall include a minimum of three independent directors appointed from time to time by the Board. The Audit Committee shall be composed solely of independent directors. The Audit Committee shall oversee the corporate financial reporting process and the internal and external audits of the Corporation. The Audit Committee will undertake those specific duties, responsibilities and processes described in the Audit Committee Charter adopted by the Board and such other duties as the Board of Directors from time to time may prescribe.

Section 5.6. Compensation Committee. There shall be a Compensation Committee of the Board of Directors that shall include a minimum of three independent directors appointed from time to time by the Board. The Compensation Committee shall be composed solely of independent directors. The Compensation Committee will undertake those specific duties, responsibilities and processes described in the Compensation Committee Charter adopted by the Board and such other duties as the Board of Directors from time to time may prescribe.

Section 5.7. Governance Committee. There shall be a Governance Committee of the Board of Directors that shall include a minimum of three independent directors appointed from time to time by the Board. The functions of the Governance Committee shall be to review and make recommendations with respect to the nomination of director candidates and executive officer succession and planning and to oversee corporate governance for the Corporation. The Governance Committee will undertake those specific duties, responsibilities and processes described in the Governance Committee Charter adopted by the Board and such other duties as the Board of Directors from time to time may prescribe.

ARTICLE VI OFFICERS

Section 6.1. Officers. The officers of the Corporation shall be a Chief Executive Officer, a President, one or more Vice Presidents (any one or more of whom may be designated Executive Vice President or Senior Vice President), a Chief Financial Officer, a Treasurer, a Secretary, and a Controller. The Corporation may also have such other officers as the Board of Directors may in its discretion elect or as may be appointed under Section 6.3 of these Bylaws. Any two or more offices may be held by the same person.

Section 6.2. Election. The Board of Directors at its first meeting after, or a meeting held in conjunction with, each annual meeting of stockholders shall elect all executive officers for the ensuing year. Any vacancy occurring in any office of the Corporation by death, resignation,

removal or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

Section 6.3. Other Officers. In addition to the officers enumerated in Section 6.1, the Corporation may have one or more other officers which may include assistant officers, staff or division officers, as the Board may appoint. The Board may delegate its authority to appoint other officers to a committee of the Board or the President. Each such other officer shall hold office for such period and have such title and responsibilities as the Board or its delegate shall determine and may be removed in accordance with Section 6.4.

Section 6.4. Term. Each officer shall hold office until his successor shall have been chosen and shall have been qualified or until his earlier death, resignation or removal. Any officer may be removed at any time with or without cause by the Board of Directors. Any officer appointed by a delegate of the Board may be removed at any time with or without cause by such delegate. Any officer may resign at any time by giving written notice to the Board of Directors, to the Secretary of the Corporation, or to the officer's manager.

Section 6.5. The President. The President shall be the Chief Executive Officer of the Corporation, and, subject to the control of the Board of Directors, shall have general and active management over the business and affairs of the Corporation. In the absence of the Chairman of the Board, the President shall preside at all meetings of the stockholders and the Board of Directors. In general, he shall perform all other duties normally incident to the office of President and such other duties as may be prescribed by the Board of Directors from time to time.

Section 6.6. Vice Presidents. In the absence of the President, or in the event of his inability or refusal to act, any Vice President designated by the Board of Directors shall perform the duties and exercise the powers of the President. The Vice Presidents shall perform such other duties as from time to time may be assigned to them by the President or the Board of Directors.

Section 6.7. Chief Financial Officer. The Chief Financial Officer shall be the principal financial officer of the Corporation and shall consider the adequacy of, and make recommendations to the Board of Directors concerning, the capital resources available to the Corporation to meet its projected obligations and business plans; report periodically to the Board of Directors on financial results and trends affecting the business; and, in general, shall perform all other duties normally incident to the office of Chief Financial Officer and shall have such powers and perform such other duties as may from time to time be granted or assigned to such officer by the President or the Board of Directors. The Chief Financial Officer shall be the general manager of the internal audit function.

Section 6.8. The Secretary. The Secretary shall (a) keep or cause to be kept the minutes of the meetings of the stockholders, the Board of Directors and committees of the Board of Directors, (b) see that all notices are duly given in accordance with the provisions of these Bylaws and as required by law, (c) be custodian of the corporate records and of the seal of the Corporation, (d) have general charge of the stock transfer books of the Corporation, and (e) in general, perform all duties normally incident to the office of Secretary and such other duties as from time to time may be assigned to such officer by the President or the Board of Directors.

Section 6.9. The Controller. The Controller of the Corporation shall be the principal accounting officer of the Corporation and shall be the general manager of the accounting and tax functions of the Corporation and its subsidiaries, subject to the control of the Chief Financial Officer. The Controller shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors, the President or the Chief Financial Officer.

Section 6.10. The 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 monies and other valuables in the name and to the credit of the Corporation. The Treasurer shall have such other powers and perform such other duties as from time to time may be prescribed by the Board of Directors, the President or the Chief Financial Officer.

**ARTICLE VII
INDEMNIFICATION OF DIRECTORS,
OFFICERS, EMPLOYEES AND AGENTS**

Section 7.1. Actions, Suits or Proceedings Other Than by or in the Right of the Corporation. Subject to the other provisions of this ARTICLE VII, the Corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL (as the same exists now or as it may be hereinafter amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment) any person (and the heirs, executors, administrators or estate of such person) who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any threatened, pending or completed action, suit, investigation, inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, regulatory, investigative, legislative or otherwise and whether formal or informal (as further defined in Section 7.19, a "Proceeding") (other than an action by or in the right of the Corporation) by reason of the fact that such person is or was serving, or had agreed to serve, in an Official Capacity (as defined in Section 7.19) for the Corporation, or while serving in an Official Capacity for the Corporation is or was serving at the request of the Corporation in an Official Capacity for another corporation, partnership, limited liability company, joint venture, trust, association or other enterprise, whether for profit or not-for-profit, including any subsidiaries of the Corporation, any entities formed by the Corporation and any employee benefit plans maintained or sponsored by the Corporation (an "Other Enterprise"), whether the basis of a Proceeding is an alleged action in an Official Capacity or in any other capacity while serving in an Official Capacity, or is an employee of the Corporation specifically designated by the Board as an indemnified employee (hereinafter, each of the foregoing persons, a "Covered Person"), against Expenses (as defined in Section 7.19) (including attorneys' fees) actually and reasonably incurred by such person in connection with such 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 interests of the Corporation, and, with respect to any criminal Proceeding, had no reasonable cause to believe his or her conduct was unlawful.

Section 7.2. Actions or Suits by or in the Right of the Corporation. Subject to the other provisions of this ARTICLE VII, the Corporation shall indemnify and hold harmless, to the

fullest extent permitted by the DGCL (as the same exists now or as it may be hereinafter amended, but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than said law permitted the Corporation to provide prior to such amendment), any Covered Person who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, a Proceeding by or in the right of the Corporation 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; provided 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 Delaware Court of Chancery or the court in which such action or suit or proceeding 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 Delaware Court of Chancery or such other court shall deem proper.

Section 7.3. Indemnification for Expenses of Successful Party. Notwithstanding the other provisions of this ARTICLE VII, to the extent that a Covered Person has been successful on the merits or otherwise in defense of any Proceeding described in Section 7.1 or Section 7.2, or in defense of any claim, issue or matter therein, such person shall be indemnified against Expenses (as defined in Section 7.19) (including attorneys' fees) actually and reasonably incurred by such person in connection therewith.

Section 7.4. Indemnification of Others. Subject to the other provisions of this ARTICLE VII, the Corporation shall have the power to indemnify its employees and its agents to the extent not prohibited by the DGCL or other applicable law. Subject to applicable law, the Board shall have the power to delegate the determination of whether employees or agents shall be indemnified to such person or persons as the Board determines.

Section 7.5. Advance of Costs, Charges and Expenses. Expenses (including attorneys' fees) incurred by a Covered Person in defending a Proceeding shall be paid by the Corporation in advance of the final disposition of such Proceeding. Such advances shall be paid by the Corporation within ten (10) calendar days after the receipt by the Corporation of a statement or statements from the claimant requesting such advance or advances from time to time together with a reasonable accounting of such Expenses; provided, however, that the payment of such Expenses incurred by a Covered Person in his or her capacity as a director or officer shall be made only upon delivery to the Corporation of an undertaking in writing by or on behalf of such Covered Person to repay all amounts so advanced if it shall ultimately be determined by final judicial decision from which there is no further right of appeal (a "final disposition") that such Covered Person is not entitled to be indemnified for such Expenses under this bylaw or otherwise. The Covered Person's undertaking to repay the Corporation any amounts advanced for Expenses shall not be required to be secured and shall not bear interest.

(a) Except as otherwise provided in the DGCL or this Section 7.5, the Corporation shall not impose on the Covered Person additional conditions to the advancement of Expenses or require from the Covered Person additional undertakings regarding repayment. Advancements of Expenses shall be made without regard to the Covered Person's ability to repay the Expenses.

(b) Advancements of Expenses pursuant to this Section 7.5 shall not require approval of the Board or the stockholders of the Corporation, or of any other person or body. The Secretary shall promptly advise the Board in writing of the request for advancement of Expenses, of the amount and other details of the request and of the undertaking to make repayment provided pursuant to this Section 7.5.

(c) Advancements of Expenses to a Covered Person shall include any and all reasonable Expenses incurred pursuing an action to enforce this right of advancement, including Expenses incurred preparing and forwarding statements to the Corporation to support the advancements claimed.

(d) The right to advancement of Expenses shall not apply to (i) any Proceeding against a Covered Person brought by the Corporation and approved by resolution of a majority of the Full Board which alleges willful misappropriation of corporate assets by such agent, wrongful disclosure of confidential information, or any other willful and deliberate breach in bad faith of such agent's duty to the Corporation or its stockholders, or (ii) any claim for which indemnification is excluded pursuant to these Bylaws, but shall apply to any Proceeding referenced in Section 7.6(c) or Section 7.6(d) prior to a determination that the person is not entitled to be indemnified by the Corporation.

Section 7.6. Limitations on Indemnification. Except as otherwise required by the DGCL or the Certificate of Incorporation, the Corporation shall not be obligated to indemnify any person pursuant to this ARTICLE VII in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of such person under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Exchange Act, or similar provisions of federal, state or local statutory law or common law, if such person is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Corporation by such person of any bonus or other incentive-based or equity-based compensation or of any profits realized by such person from the sale of securities of the Corporation, as required in each case under the Exchange Act, including any such reimbursements that arise from an accounting restatement of the Corporation pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act") or the rules of any national securities exchange upon which the Corporation's securities are listed, if such person is held liable therefor (including pursuant to any settlement arrangements);

(d) for any reimbursement of the Corporation by such person of profits arising from the purchase and sale by such person of securities in violation of Section 306 of the Sarbanes-Oxley Act, if such person is held liable therefor (including pursuant to any settlement arrangements);

(e) initiated by such person against the Corporation or its directors, officers, employees, agents or other Covered Persons, unless (i) the Board authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Corporation provides the indemnification, in

its sole discretion, pursuant to the powers vested in the Corporation under applicable law, (iii) otherwise made under Section 7.5 or (iv) otherwise required by applicable law; or

(f) if prohibited by applicable law.

Section 7.7. Procedure for Indemnification; Determination.

(a) To obtain indemnification under this ARTICLE VII, a Covered Person shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to the Covered Person and is reasonably necessary to determine whether and to what extent the Covered Person is entitled to indemnification. Upon written request by a Covered Person for indemnification, a determination (the "Determination"), if required by applicable law, with respect to the Covered Person's entitlement thereto shall be made as follows: (i) by the Board by majority vote of a quorum consisting of Disinterested Directors (as defined in Section 7.19), (ii) if such a quorum of Disinterested Directors cannot be obtained, by majority vote of a committee duly designated by the Board (all directors, whether or not Disinterested Directors, may participate in such designation) consisting solely of two or more Disinterested Directors, (iii) if such a committee cannot be designated, by any Independent Counsel (as defined in Section 7.19) selected by the Board, as prescribed in clause (i) above or by the committee of the Board prescribed in clause (ii) above, in a written opinion to the Board, a copy of which shall be delivered to the claimant; or if a quorum of the Board cannot be obtained for clause (i) above and the committee cannot be designated under clause (ii) above, selected by majority vote of the Full Board (in which directors who are parties may participate); or (iv) if such Independent Counsel determination cannot be obtained, by majority vote of a quorum of stockholders consisting of stockholders who are not parties to such Proceeding, or if no such quorum is obtainable, by a majority vote of stockholders who are not parties to the Proceeding. If it is so determined that the claimant is entitled to indemnification, payment to the claimant shall be made within thirty (30) calendar days after such determination.

(b) If a claim for indemnification under this ARTICLE VII is not paid in full by the Corporation within thirty (30) calendar days after a determination is made pursuant to Section 7.7(a) that the claimant is entitled to be indemnified, or if a request for advancement of Expenses under this ARTICLE VII is not paid in full by the Corporation within ten (10) calendar days after a statement pursuant to Section 7.5 above and the required undertaking, if any, have been received by the Corporation, the claimant may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction to recover the unpaid amount of the claim for indemnification or request for advancement of Expenses and, if successful in whole or in part, the claimant shall be entitled to be paid also any and all Expenses incurred in connection with prosecuting such claim. In any such suit, the Corporation shall, to the fullest extent not prohibited by law, have the burden of proof and the burden of persuasion that the claimant is not entitled to the requested indemnification or advancement of Expenses. It shall be a defense to any such action that, under the DGCL or other applicable law, the claimant has not met the standard of conduct which makes it permissible for the Corporation to indemnify the claimant for the amount claimed or that the claimant is not entitled to the requested advancement of Expenses, but (except where the required undertaking, if any, has not been tendered to the Corporation) the burden of proof and the burden of persuasion shall be on the Corporation. Neither the failure of the Corporation (including its Disinterested Directors, Independent Counsel

or stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because he or she has met the applicable standard of conduct set forth under the DGCL or other applicable law, nor an actual determination by the Corporation (including its Disinterested Directors, Independent Counsel or stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that the claimant has not met the applicable standard of conduct.

(c) The termination of any 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 the 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 the person's conduct was unlawful.

(d) If a Determination shall have been made pursuant to Section 7.7(a) above that the claimant is entitled to indemnification, the Corporation shall be bound by such determination in any judicial proceeding commenced pursuant to Section 7.7(b) above.

(e) The Corporation shall be precluded from asserting in any judicial proceeding commenced pursuant to Section 7.7(b) above that the procedures and presumptions of these Bylaws are not valid, binding and enforceable and shall stipulate in such proceeding that the Corporation is bound by all the provisions of these Bylaws.

Section 7.8. Procedures For The Determination of Whether Standards Have Been Satisfied.

(a) All costs incurred by the Corporation in making the Determination shall be borne solely by the Corporation, including, but not limited to, the costs of legal counsel, proxy solicitations and judicial determinations. The Corporation shall also be solely responsible for paying all costs incurred by it in defending any suits or Proceedings challenging payments by the Corporation to a Covered Person under these Bylaws.

(b) The Corporation shall use its best efforts to make the Determination contemplated by Section 7.7(a) hereof as promptly as is reasonably practicable under the circumstances.

Section 7.9. Non-exclusivity of Rights. The rights of indemnification and advancement of Expenses provided in this ARTICLE VII shall not be deemed exclusive of any other rights to which a Covered Person seeking indemnification or advancement of Expenses may be entitled under any law (common law or statutory law), bylaw, agreement, insurance policy, vote of stockholders or disinterested directors or otherwise, both as to action in his or her Official Capacity and as to action in another capacity while holding such office or while employed by or acting as agent for the Corporation. The Corporation is specifically authorized to enter into an agreement with any of its directors, officers, employees or agents providing for indemnification and advancement of Expenses, including attorneys' fees, that may change, enhance, qualify or limit any right to indemnification or the advancement of Expenses provided by this ARTICLE VII, to the fullest extent not prohibited by the DGCL or other applicable law.

Section 7.10. Continuation of Rights. The rights of indemnification and advancement of Expenses provided in this ARTICLE VII shall continue as to any person who has ceased to serve in an Official Capacity and shall inure to the benefit of his or her heirs, executors, administrators and estates.

Section 7.11. Contract Rights. Without the necessity of entering into an express contract, the obligations of the Corporation to indemnify a Covered Person under this ARTICLE VII, including the duty to advance Expenses, shall be considered a contract right between the Corporation and such individual and shall be effective to the same extent and as if provided for in a contract between the Corporation and the Covered Person. Such contract right shall be deemed to vest at the commencement of such Covered Person's service to or at the request of the Corporation, and no amendment, modification or repeal of this ARTICLE VII shall affect, to the detriment of the Covered Person and such Covered Person's heirs, executors, administrators and estate, such obligations of the Corporation in connection with a claim based on any act or failure to act occurring before such modification or repeal.

Section 7.12. Subrogation. In the event of payment of indemnification to a Covered Person, the Corporation shall be subrogated to the extent of such payment to any right of recovery such person may have and such person, as a condition of receiving indemnification from the Corporation, shall execute all documents and do all things that the Corporation may deem necessary or desirable to perfect such right of recovery, including the execution of such documents necessary to enable the Corporation effectively to enforce any such recovery.

Section 7.13. No Duplication of Payments. The Corporation shall not be liable under this ARTICLE VII to make any payment in connection with any claim made against a Covered Person to the extent such person has otherwise received payment (under any insurance policy, bylaw, agreement or otherwise) of the amounts otherwise payable as indemnity hereunder.

Section 7.14. Insurance and Funding.

(a) The Corporation shall purchase and maintain, at the Corporation's expense, insurance to protect the Corporation and any person against any liability or expense asserted against or incurred by such person in connection with any Proceeding, whether or not the Corporation would have the power to indemnify such person against such liability or expense by law or under this ARTICLE VII or otherwise; provided that such insurance is available on acceptable terms, which determination shall be made by resolution adopted by a majority of the Full Board. The Corporation may create a trust fund, grant a security interest or use other means (including, without limitation, a letter of credit) to insure the payment of such sums as may become necessary to effect the indemnification provided herein.

(b) Any full or partial payment by an insurance company under any insurance policy covering any Covered Person indemnified above made to or on behalf of a Covered Person under this ARTICLE VII shall relieve the Corporation of its liability for indemnification provided for under this ARTICLE VII or otherwise to the extent of such payment.

(c) In the absence of fraud, (i) the decision of the Board of Directors as to the propriety of the terms and conditions of any insurance or other financial arrangement made pursuant to this

Section 7.14 and the choice of the person to provide the insurance or other financial arrangement is conclusive, and (ii) the insurance or other financial arrangement does not subject any director approving it to personal liability for his action in approving the insurance or other financial arrangement; even if a director approving the insurance or other financial arrangement is a beneficiary of the insurance or other financial arrangement.

Section 7.15. No Imputation. The knowledge and/or actions, or failure to act, of any officer, director, employee or agent of the Corporation or an Other Enterprise shall not be imputed to a Covered Person for purposes of determining the right to indemnification under this ARTICLE VII.

Section 7.16. Reliance. Persons who after the date of the adoption of ARTICLE VII or any amendment thereto serve or continue to serve the Corporation in an Official Capacity or who, while serving in an Official Capacity, serve or continue to serve in an Official Capacity for an Other Enterprise, shall be conclusively presumed to have relied on the rights to indemnification and advancement of Expenses contained in this ARTICLE VII.

Section 7.17. Severability. If this ARTICLE VII or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Corporation shall nevertheless indemnify and hold harmless each Covered Person indemnified pursuant to this ARTICLE VII as to all Expenses with respect to any Proceeding to the full extent permitted by any applicable portion of this ARTICLE VII that shall not have been invalidated and to the fullest extent permitted by applicable law.

Section 7.18. Notices. Any notice, request or other communication required or permitted to be given to the Corporation under this ARTICLE VII shall be in writing and either delivered in person or sent by U.S. mail, overnight courier or by e-mail or other electronic transmission, to the Secretary of the Corporation and shall be effective only upon receipt by the Secretary.

Section 7.19. Certain Definitions.

(a) The term "Corporation" shall include, in addition to ABM Industries Incorporated and, in the event of a consolidation or merger involving the Corporation, 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, 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 an Other Enterprise, shall stand in the same position under the provisions of this ARTICLE VII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued.

(b) The term "Disinterested Director" means a director of the Corporation who is not and was not a party to the matter in respect of which indemnification is sought by the claimant.

(c) The term "Expenses" shall be broadly construed and shall include all direct and indirect losses, liabilities, expenses, including fees and expenses of attorneys, fees and expenses of accountants, court costs, transcript costs, fees and expenses of experts, witness fees and

expenses, travel expenses, printing and binding costs, telephone charges, delivery service fees, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), judgments, fines (including excise taxes assessed on a person with respect to an employee benefit plan) and amounts paid in settlement and all other disbursements or expenses of the types customarily incurred in connection with (i) the investigation, prosecution, defense, appeal or settlement of a Proceeding, (ii) serving as an actual or prospective witness, or preparing to be a witness in a Proceeding, or other participation in, or other preparation for, any Proceeding, (iii) any compulsory interviews or depositions related to a Proceeding, (iv) any non-compulsory interviews or depositions related to a Proceeding, subject to the person receiving advance written approval by the Corporation to participate in such interviews or depositions, and (v) responding to, or objecting to, a request to provide discovery in any Proceeding. Expenses shall also include any federal, state, local and foreign taxes imposed on such person as a result of the actual or deemed receipt of any payments under this ARTICLE VII.

(d) The term “Independent Counsel” means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporation law and shall include any person who, under the applicable standards of professional conduct then prevailing, would not have a conflict of interest in representing either the corporation or the claimant in an action to determine the claimant’s rights under this ARTICLE VII.

(e) The term “not opposed to the best interest of the Corporation,” when used in the context of a Covered Person’s service with respect to employee benefit plans maintained or sponsored by the Corporation, describes the actions of a person who acts in good faith and in a manner he reasonably believes to be in the best interests of the participants and beneficiaries of an employee benefit plan.

(f) The term “Official Capacity” shall mean service as a director or officer of the Corporation or service at the request of the Corporation, while serving as director or officer of the Corporation, as an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary, trustee or other representative of an Other Enterprise.

(g) The term “Proceeding” shall be broadly construed and shall include the investigation, preparation, prosecution, defense, settlement, mediation, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit, investigation (including any internal investigation), inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, legislative, investigative or otherwise and whether formal or informal, including an action initiated by Covered Person to enforce Covered Person’s rights to indemnification under these Bylaws, and whether instituted by or in the right of the Corporation, a governmental agency, the Board of Directors of the Corporation, any committee thereof, a class of its security holders or any other party.

(h) The term “serving at the request of the Corporation” includes any service as a director, officer, employee, or agent of the Corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries.

**ARTICLE VIII
GENERAL PROVISIONS**

Section 8.1. Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution adopted by a majority of the Full Board.

Section 8.2. Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization, and the name of the state of its incorporation. The seal may be used by causing it or a facsimile to be impressed or affixed or reproduced or otherwise.

Section 8.3. Books and Records. The books and records of the Corporation may be kept at such places within or without the State of Delaware as the Board may from time to time determine.

Section 8.4. Notice to Stockholders by Electronic Transmission.

(a) Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the Certificate of Incorporation or these Bylaws, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the Corporation. Any such consent shall be deemed revoked if (i) the Corporation is unable to deliver by electronic transmission two consecutive notices given by the Corporation in accordance with such consent, and (ii) such inability becomes known to the Secretary or an Assistant Secretary of the Corporation or to the transfer agent, or other person responsible for the giving of notice. However, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action.

(b) Any notice given pursuant to the preceding paragraph shall be deemed given: (i) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice, (ii) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice, (iii) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice, and (iv) if by any other form of electronic transmission, when directed to the stockholder. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Corporation that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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

Section 8.5. Notice to Stockholders Sharing an Address. Except as otherwise prohibited under the DGCL, without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders given by the Corporation under the provisions of the DGCL, the Certificate of Incorporation or these Bylaws shall be effective if

given by a single written notice to stockholders who share an address if (a) consented to by the stockholders at that address to whom such notice is given, or (b) the Corporation complies with the provisions of Rule 14a-3(e) of the Exchange Act. The stockholder consent referenced in the immediately preceding sentence shall be revocable by the stockholder by written notice to the Corporation. Any stockholder who fails to object in writing to the Corporation, within 60 days of having been given written notice by the Corporation of its intention to send the single notice, shall be deemed to have consented to receiving such single written notice.

Section 8.6. Waiver of Notice. Whenever notice is required to be given to stockholders, directors or other persons under any provision of the DGCL, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time of the event for which notice is to be given, shall be deemed equivalent to notice. Attendance of a person at a meeting, whether in person, by remote communication, if applicable, or by proxy, 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 or the board of directors, as the case may be, need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws. Any person so waiving notice of such a meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

Section 8.7. Section Headings. Section headings in these Bylaws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 8.8. Gender. All words used in these Bylaws in the masculine gender shall extend to and shall include the feminine and neuter genders.

Section 8.9. Time Periods. In applying any provision of these Bylaws that requires that an act be done or not be done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, unless the use of business days are specified, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

Section 8.10. Evidence of Authority. A certificate by the Secretary, or an Assistant Secretary, or a temporary Secretary, as to any action taken by the stockholders, directors, a committee or any officer or representative of the Corporation shall, as to all persons who rely on the certificate in good faith, be conclusive evidence of such action.

Section 8.11. Certificate of Incorporation. All references in these Bylaws to the "Certificate of Incorporation" shall be deemed to refer to the "Certificate of Incorporation" of the Corporation, as amended and in effect from time to time, including the terms of any certificate of designations of any series of Preferred Stock.

Section 8.12. Bylaw Provisions Additional and Supplemental to Provisions of Law. All restrictions, limitations, requirements and other provisions of these Bylaws shall be construed, insofar as possible, as supplemental and additional to all provisions of law applicable to the subject matter thereof and shall be fully complied with in addition to the said provisions of law unless such compliance shall be illegal.

Section 8.13. Interpretation. Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these Bylaws. Reference in these Bylaws to any provision of the DGCL shall be deemed to include all amendments thereof. The term “person” includes both a corporation and a natural person. The term “Chief Executive Officer” shall be equivalent to the term “President” under the DGCL.

Section 8.14. Inconsistent Provisions. In the event that any provision of these Bylaws is or becomes inconsistent with any provision of the Certificate of Incorporation, the DGCL or any other applicable law, such provision of these Bylaws shall not be given any effect to the extent of such inconsistency but shall otherwise be given full force and effect.

Section 8.15. Notices. Except as otherwise specifically provided herein or required by the DGCL or other applicable law or the Certificate of Incorporation, all notices required to be given to any person pursuant to these Bylaws shall be in writing and may in every instance be effectively given by hand delivery to the recipient thereof, by depositing such notice in the mails, postage paid, addressed to such person at his or her last known address as the same appears on the books of the Corporation. Notices may also be sent by facsimile or other electronic transmission.

ARTICLE IX STOCK

Section 9.1. Shares of Stock. The shares of capital stock of the Corporation shall be represented by a certificate, unless and until a majority of the Full Board adopts a resolution permitting shares to be uncertificated. Notwithstanding the adoption of any such resolution providing for uncertificated shares, every holder of capital stock of the Corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate for shares of capital stock of the Corporation signed by, or in the name of the Corporation by, (a) the Chairman of the Board, the Chief Executive Officer, the President or any Executive Vice President, and (b) the Chief Financial Officer, the Secretary or an Assistant Secretary, certifying the number of shares owned by such stockholder in the Corporation.

Section 9.2. Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 9.3. Registered Stockholders. A record shall be kept of the name of the person, firm or corporation owning each share of stock of the Corporation, including, in the case of stock

represented by each certificate for stock of the Corporation issued, the number of shares represented by each such certificate, and the date thereof, and, in the case of cancellation, the date of cancellation. Except as otherwise expressly required by law, the person in whose name shares of stock stand on the books of the Corporation shall be deemed the owner thereof for all purposes as regards the Corporation. Without limiting the generality of the foregoing, the Corporation (a) shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends and to vote as such owner, and (b) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

Section 9.4. Lost Certificates. The Board of Directors may direct a new certificate or uncertificated shares to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate or uncertificated shares, 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, or such owner's legal representative, to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate or uncertificated shares.

Section 9.5. Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these Bylaws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, 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, properly endorsed for transfer and payment of all necessary transfer taxes; or, in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and upon payment of all necessary transfer taxes and compliance with appropriate procedures for transferring shares in uncertificated form; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 9.6. Record Date. The Board of Directors may by resolution adopted by a majority of the Full Board fix in advance a date as a record date for the determination of the stockholders entitled to notice of and to vote at any meeting of stockholders, or 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, and in such case only stockholders of record on the date so fixed shall be entitled to such notice of, and to vote at, such meeting, or to receive payment of such dividend or other distribution, or allotment of rights, or exercise such rights, as the case

may be, and notwithstanding any transfer of any stock on the books of the Corporation after any such record date fixed as herein provided. In no event may any such record date: (a) be more than sixty (60) days preceding the date of any meeting of stockholders, or the date for the payment of any dividend, or the date when any change or conversion or exchange of capital stock shall go into effect, or (b) precede the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto. A determination of stockholders of record entitled to notice of or to vote at any meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for the adjourned meeting.

Section 9.7. Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 9.8. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

Section 9.9. Fractional Shares. The Corporation shall have the complete discretion to issue fractional shares.

ARTICLE X AMENDMENTS

Section 10.1. Amendments. Subject to the laws of the State of Delaware and as provided in Article Sixth of the Certificate of Incorporation, which requires a vote of not less than 70% of the outstanding stock entitled to vote on amendments to these Bylaws, these Bylaws may be altered, amended or repealed at any regular meeting of the stockholders (or at any special meeting duly called for that purpose); *provided* that in the notice of such special meeting, notice of such purpose shall be given. Subject to the laws of the State of Delaware, the Certificate of Incorporation and these Bylaws, the Board of Directors shall also have the power to add any provision to, or to amend or repeal any provision of, these Bylaws by resolution adopted by the affirmative vote of a majority of the Full Board at any regular or special meeting of the Board of Directors at which a quorum is present.

The undersigned hereby certifies that she is the duly elected, qualified, and acting Secretary of ABM Industries Incorporated, a Delaware corporation (the "Corporation"), and that the foregoing Bylaws were duly adopted on 2nd day of September, 2015 by the Corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set her hand this 2nd day of September, 2015.

/s/ Sarah Hlavinka McConnell

Sarah Hlavinka McConnell

Executive Vice President, General Counsel & Secretary

INDEMNIFICATION AGREEMENT

THIS AGREEMENT, dated as of [●], is by and between ABM Industries Incorporated, a Delaware corporation (the “Company”), and [●] (the “Indemnitee”).

WHEREAS, it is essential to the Company to retain and attract as directors and officers the most capable persons available;

WHEREAS, the Company desires to have the Indemnitee serve or continue to serve as a director and/or officer of the Company;

WHEREAS, the Company and the Indemnitee recognize the increased risk of litigation and other claims being asserted against directors and officers of companies in today’s environment;

WHEREAS, basic protection against undue risk of personal liability of directors and officers heretofore has been provided through insurance coverage providing reasonable protection at reasonable cost, and the Indemnitee has relied on the availability of such coverage; but as a result of substantial changes in the marketplace for such insurance it has become increasingly difficult to obtain such insurance on terms providing reasonable protection at reasonable cost;

WHEREAS, the Company’s Bylaws, as amended and restated (the “Bylaws”), require the Company to indemnify and advance expenses to its directors and officers to the extent provided therein, and the Indemnitee serves as a director and/or officer of the Company, in part, in reliance on such provisions in the Bylaws;

WHEREAS, the current difficulty in obtaining adequate director and officer liability insurance coverage at a reasonable cost, and uncertainties as to the availability of indemnification created by recent court decisions, have increased the risk that the Company will be unable to retain and attract as directors and officers the most capable persons available;

WHEREAS, the Company has determined that its inability to retain and attract as directors and officers the most capable persons would be detrimental to the interests of the Company, and that the Company therefore should seek to assure such persons that indemnification and insurance coverage will be available in the future;

WHEREAS, in recognition of the Indemnitee’s need for substantial protection against personal liability in order to enhance the Indemnitee’s contemplated service or continued service to the Company in an effective manner, the increasing difficulty in obtaining satisfactory director and officer liability insurance coverage, and the Indemnitee’s reliance on the Bylaws, and in part to provide the Indemnitee with specific contractual assurance that the protection promised by the Bylaws will be available to the Indemnitee (regardless of, among other things, any amendment to or revocation of the applicable provisions of the Bylaws or any change in the composition of the Company’s Board of Directors or acquisition transaction relating to the Company), the Company wishes to provide in this Agreement for the indemnification of and the advancing of

expenses to the Indemnitee to the fullest extent (whether partial or complete) permitted by applicable law and as set forth in this Agreement, and, to the extent insurance is maintained, for the continued coverage of the Indemnitee under the directors' and officers' liability insurance policy of the Company; and

WHEREAS, this Agreement is a supplement to and in furtherance of the Company's Certificate of Incorporation and Bylaws and any resolutions adopted pursuant thereto and shall not be deemed a substitute thereof, nor to diminish or abrogate any rights of Indemnitee thereunder;

NOW, THEREFORE, in consideration of the premises and of the Indemnitee agreeing to serve, or continuing to serve, the Company after the date hereof directly or, at its request, as an officer, director, manager, member, partner, tax matters partner, fiduciary or trustee of, or in any other capacity with, another Person (as defined below) or any employee benefit plan, the sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Certain Definitions. In addition to terms defined elsewhere herein, the following terms have the following meanings when used in this Agreement:

- (a) Agreement: means this Indemnification Agreement, as amended from time to time hereafter.
- (b) Board of Directors: means the Board of Directors of the Company.
- (c) Change in Control shall be deemed to have occurred upon any of the following events:
 - (i) A merger, recapitalization, consolidation, or other similar transaction to which the Company is a party, unless securities representing at least 50% of the combined voting power of the then-outstanding securities of the surviving entity or a parent thereof are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the persons who beneficially owned the Company's outstanding voting securities immediately before the transaction;
 - (ii) A sale, transfer or disposition of all or substantially all of the Company's assets, unless securities representing at least 50% of the combined voting power of the then-outstanding securities of the entity acquiring the Company's assets or parent thereof are immediately thereafter beneficially owned, directly or indirectly and in substantially the same proportion, by the persons who beneficially owned the Company's outstanding voting securities immediately before the transaction; or
 - (iii) A merger, recapitalization, consolidation or other transaction to which the Company is a party or the sale, transfer or other

disposition of all or substantially all of the Company's assets if, in either case, the members of the Company's Board of Directors immediately prior to consummation of the transaction do not, upon consummation of the transaction, constitute at least a majority of the board of directors of the surviving entity or the entity acquiring the Company's assets, as the case may be, or a parent thereof (for this purpose, any change in the composition of the Company's Board of Directors that is anticipated or pursuant to an understanding or agreement in connection with a transaction will be deemed to have occurred at the time of the transaction).

- (d) Claim: shall be broadly construed and shall include the investigation, preparation, prosecution, defense, settlement, mediation, arbitration and appeal of, and the giving of testimony in any threatened, asserted, pending or completed suit, investigation, inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, legislative, investigative or other action, suit or proceeding of any kind whatsoever, whether formal or informal, or any appeal of any kind therefrom, whether instituted by or in the right of the Company, the Board of Directors of the Company, any committee thereof, a class of its security holders, any governmental agency or any other party, or any inquiry, hearing or investigation (including any internal investigation), that the Indemnitee in good faith believes might lead to the institution of any such action, suit or proceeding, whether civil, criminal, administrative, legislative, investigative or other, including any mediation, arbitration or other alternative dispute resolution mechanism.
- (e) Exchange Act: means the Securities Exchange Act of 1934, as amended.
- (f) Indemnifiable Expenses: shall be broadly construed and shall include all direct and indirect losses, liabilities, expenses, including fees and expenses of attorneys, fees and expenses of accountants, court costs, transcript costs, fees and expenses of experts, witness fees and expenses, travel expenses, printing and binding costs, telephone charges, delivery service fees, the premium, security for, and other costs relating to any bond (including cost bonds, appraisal bonds, or their equivalents), judgments, fines (including excise taxes assessed on a person with respect to an employee benefit plan) and amounts paid in settlement and all other disbursements or expenses of the types customarily incurred in connection with (i) the investigation, prosecution, defense, appeal or settlement of a Proceeding, (ii) serving as an actual or prospective witness, or preparing to be a witness in a Proceeding, or other participation in, or other preparation for, any Proceeding, (iii) any compulsory interviews or depositions related to a Proceeding, (iv) any non-compulsory

interviews or depositions related to a Proceeding, subject to the person receiving advance written approval by the Company to participate in such interviews or depositions, (v) responding to, or objecting to, a request to provide discovery in any Proceeding, and (vi) establishing or enforcing a right to indemnification under this Agreement, the Bylaws, applicable law or otherwise. Indemnifiable Expenses shall also include any federal, state, local and foreign taxes imposed on such person as a result of the actual or deemed receipt of any payments under this Agreement. For the avoidance of doubt, the term "Indemnifiable Expenses" shall not include any Indemnifiable Liabilities.

- (g) Indemnifiable Event: means any event or occurrence, whether occurring before, on or after the date of this Agreement, related to or arising from (i) the performance of, or the failure to perform, the Indemnitee's duties or obligations to the Company or any of its subsidiaries, in the Indemnitee's capacity as an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary or trustee, (ii) an action or inaction by the Indemnitee in such capacity (whether or not serving in such capacity at the time any Indemnifiable Expenses or Indemnifiable Liabilities are incurred for which indemnity can be provided under this Agreement) or (iii) the Indemnitee's status of being or having been an officer, director, manager, member, partner, tax matters partner, employee, agent, fiduciary or trustee of, or having served in any other capacity with, the Company or any of its subsidiaries, or an Other Enterprise at the request of the Company.
- (h) Indemnifiable Liabilities: means any losses or liabilities, including any judgments, fines, excise taxes, penalties and amounts paid in settlement (with the approval of the Company), arising out of or in connection with any Claim by reason of (or arising in part out of) an Indemnifiable Event (including all interest, assessments and other charges paid or payable in connection with or in respect of any such judgments, fines, excise taxes, penalties or amounts paid in settlement).
- (i) Independent Counsel: means a law firm, a member of a law firm, or an independent practitioner, that is experienced in matters of corporate law and neither currently is, nor in the five (5) years previous to its selection has been, retained to represent (i) the Company or the Indemnitee in any matter material to either such party (other than with respect to matters concerning the Indemnitee under this Agreement or of other indemnitees under similar indemnification agreements) or (ii) any other party to the Claim giving rise to a claim for indemnification hereunder.

Notwithstanding the foregoing, the term “Independent Counsel” shall not include any Person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or the Indemnitee in an action to determine the Indemnitee’s rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above.

- (j) “Other Enterprise” means another corporation, partnership, limited liability company, joint venture, trust, association or other enterprise, whether for profit or not-for-profit, including any subsidiaries of the Company, any entities formed by the Company and any employee benefit plans maintained or sponsored by the Company where the Indemnitee is serving in any capacity at the request of the Company.
- (k) Person: means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity or other entity.
- (l) The term “Proceeding” shall be broadly construed and shall include the investigation, preparation, prosecution, defense, settlement, mediation, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit, investigation (including any internal investigation), inquiry, hearing, mediation, arbitration, other alternative dispute mechanism or any other proceeding, whether civil, criminal, administrative, legislative, investigative or otherwise and whether formal or informal, including an action initiated by Indemnitee to enforce Indemnitee’s rights to indemnification under this Agreement, and whether instituted by or in the right of the Company, a governmental agency, the Board of Directors of the Company, any committee thereof, a class of its security holders or any other party.

2. Basic Indemnification Arrangement; Advancement of Expenses.

(a) In the event that the Indemnitee was, is or becomes subject to, a party to or witness or other participant in, or is threatened to be made subject to, a party to or witness or other participant in, a Claim by reason of (or arising in part out of) an Indemnifiable Event, including Claims brought by or in the right of the Company, Claims brought by third parties, and Claims in which the Indemnitee is solely a witness, the Company shall indemnify the Indemnitee, or cause such Indemnitee to be indemnified, to the fullest extent permitted by the Delaware General Corporation Law (“Delaware law”) as the same exists now or as it may be hereinafter amended, but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than Delaware law permitted the Company to provide prior to such amendment, against any and all Indemnifiable Expenses and Indemnifiable Liabilities for such Claim. If, in regard to any Indemnifiable Expenses or Indemnifiable

Liabilities, (i) the Indemnitee shall be entitled to indemnification pursuant to Section 2(g) or Section 4, (ii) no determination with respect to the Indemnitee's entitlement is legally required as a condition to indemnification of the Indemnitee hereunder, or (iii) the Indemnitee has been determined pursuant to Section 2(e) to be entitled to indemnification hereunder, then payments of Indemnifiable Expenses and Indemnifiable Liabilities shall be made as soon as practicable but in any event no later than thirty (30) calendar days after the later of (A) the date on which written demand is presented to the Company pursuant to Section 2(d) or (B) the earliest date on which the applicable criterion specified in clause (i), (ii) or (iii) of this Section 2(a) is satisfied.

(b) Expenses incurred by or on behalf of the Indemnitee in connection with investigating, defending, settling or appealing any Proceeding shall be paid by the Company in advance of the final disposition of such Proceeding ("Expense Advance"). Except as provided in the following sentence, the Company shall promptly pay the amount of such Expenses to the Indemnitee, but in no event later than ten (10) calendar days after the receipt by the Company of a statement or statements from the Indemnitee requesting such advance or advances pursuant to this Section 2(b), together with a reasonable accounting of such Expenses. The right to Expense Advance shall not apply to (i) any Proceeding against an officer, director or other agent of the Company brought by the Company and approved by a majority of the authorized members of the Board which alleges willful misappropriation of corporate assets by such officer, director or other agent, wrongful disclosure of confidential information, or any other willful and deliberate breach in bad faith of such officer's, director's or other agent's duty to the Company or its shareholders, or (ii) any claim for which indemnification is excluded pursuant to this Agreement, but shall apply to any Proceeding referenced in Section 2(c)(iii) or Section 2(c)(iv) of this Agreement prior to a determination that the person is not entitled to be indemnified by the Company. The obligation of the Company to make an Expense Advance pursuant to this Section 2(b) shall be conditioned upon delivery to the Company of an undertaking in writing by or on behalf of the Indemnitee in which the Indemnitee undertakes and agrees to repay to the Company any advances made pursuant to this Section 2(b) if and to the extent that it shall ultimately be determined (in accordance with this Section 2 or by final judicial determination from which there is no further right to appeal, as applicable) that the Indemnitee is not entitled to be indemnified by the Company for such amounts. The Company shall make the advances contemplated by this Section 2(b) regardless of the Indemnitee's financial ability to make repayment, and regardless of whether indemnification of the Indemnitee by the Company will ultimately be required. Any advances pursuant to this Section 2(b) shall be unsecured and interest-free. Except as set forth in this Section 2(b), the Company shall not impose on the Indemnitee additional conditions to Expense Advance or require from the Indemnitee additional undertakings regarding repayment. Advancements shall include any and all reasonable Expenses incurred pursuing an action to enforce the Indemnitee's right of advancement, including Expenses incurred preparing and forwarding statements to the Company to support the advancements claimed.

(c) Notwithstanding anything in this Agreement to the contrary, the Indemnitee shall not be entitled to indemnification or advancement of Indemnifiable Expenses or Indemnifiable Liabilities pursuant to this Agreement (i) in connection with

any Claim (or any part of any Claim) initiated by the Indemnitee (other than any cross claim, counterclaim or affirmative defense asserted by the Indemnitee in an action brought against Indemnitee), including any Claim (or any part of any Claim) initiated by the Indemnitee against the Company, any entity that it controls, any of the directors, officers, or employees thereof, other indemnitees or any third party, unless (A) the Company has joined in or the Board of Directors of the Company has authorized or consented to the initiation of such Claim, (B) it is a Claim referenced in Section 3 below, (C) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (D) otherwise made under Section 2(b), or (E) otherwise required by applicable law, (ii) if a final adjudication by a court of competent jurisdiction determines that such indemnification is prohibited by applicable law, (iii) on account of any Proceeding for an accounting of profits made from the purchase and sale (or sale and purchase) by the Indemnitee of securities of the Company within the meaning of Section 16(b) of the Exchange Act or similar provisions of state statutory law or common law, (iv) on account of any Proceeding for any reimbursement of the Company by the Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by the Indemnitee from the sale of securities of the Company, as required in each case under the Exchange Act (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act"), or the payment to the Company of profits arising from the purchase and sale by the Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), or (v) as limited by Section 13 of this Agreement.

(d) To obtain indemnification under this Agreement, the Indemnitee shall deliver to the Secretary of the Company a written request for indemnification, including therein or therewith such documentation and information as is reasonably available to the Indemnitee and is reasonably necessary to determine whether and to what extent the Indemnitee is entitled to indemnification hereunder. The Secretary of the Company shall, promptly upon receipt of such a request for indemnification, advise the Board of Directors of the Company in writing that Indemnitee has requested indemnification.

(e) Upon written request by Indemnitee for indemnification pursuant to the first sentence of Section 2(d), a determination, if required by applicable law, with respect to Indemnitee's entitlement thereto shall be made in the specific case by one of the following four methods: (i) by majority vote of a quorum consisting of directors who are not parties to such Claim ("Disinterested Directors"), (ii) if such a quorum of Disinterested Directors cannot be obtained, by majority vote of a committee duly designated by the Board of Directors (all directors, whether or not Disinterested Directors, may participate in such designation) consisting solely of two or more Disinterested Directors, (iii) if such a committee cannot be designated, by any Independent Counsel selected (A) by the Board of Directors (as prescribed in clause (i) above), (B) by the committee of the Board of Directors (as prescribed in clause (ii) above) or (C) if a quorum of the Board of Directors cannot be obtained for clause (i) above and the committee cannot be designated under clause (ii) above, by majority vote of the full Board of Directors (in which directors who are parties to the Claim may participate), in a written opinion to the Board of Directors, a copy of which shall be delivered to the Indemnitee, or (iv) if such Independent Counsel

determination cannot be obtained, by majority vote of a quorum of stockholders consisting of stockholders who are not parties to such Claim, or if no such quorum is obtainable, by a majority vote of stockholders who are not parties to such Claim), using its best efforts to make such determination as promptly as is reasonably practicable under the circumstances, that the Indemnitee is entitled to be indemnified under applicable law. If it is so determined that the Indemnitee is entitled to indemnification, payment to the Indemnitee shall be made within 30 calendar days after such determination. The Indemnitee shall reasonably cooperate with the Person or Persons making such determination with respect to the Indemnitee's entitlement to indemnification, including providing to such Person or Persons upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to the Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) actually and reasonably incurred by the Indemnitee in so cooperating with the Person or Persons making such determination shall be borne by the Company (irrespective of the determination as to the Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom. Any determination by the Company (including by its directors, stockholders or any Independent Counsel) otherwise (that the Indemnitee is entitled to indemnification) shall be conclusive and binding on the Company and the Indemnitee. The Company agrees that all costs incurred by the Company in making the determination under this Section 2(e) shall be borne solely by the Company, including, but not limited to, the costs of legal counsel (including any Independent Counsel serving under this Section 2(e)), proxy solicitations and judicial determinations.

(f) If (x) the Company (including by its directors, stockholders or any Independent Counsel) determines that the Indemnitee is not entitled to be indemnified in whole or in part under applicable law, (y) any amount of Indemnifiable Expenses or Indemnifiable Liabilities is not paid in full by the Company according to Section 2(a) after a determination is made pursuant to Section 2(e) that the Indemnitee is entitled to be indemnified, or (z) any amount of Expense Advance is not paid in full by the Company according to Section 2(b) after a request and an undertaking pursuant to Section 2(b) have been received by the Company, in each case, the Indemnitee shall have the right to commence litigation in any court in the State of Delaware having subject matter jurisdiction thereof and in which venue is proper, either challenging any such determination, which shall not be binding, or any aspect thereof (including the legal or factual bases therefor), seeking to recover the unpaid amount of Indemnifiable Expenses, Indemnifiable Liabilities or Expense Advance, as applicable, and otherwise to enforce the Company's obligations under this Agreement. The Company hereby consents to service of process and to appear in any such proceeding. If the Indemnitee commences legal proceedings in a court of competent jurisdiction to secure a determination that the Indemnitee should be indemnified under applicable law, any such judicial proceeding shall be conducted in all respects as a *de novo* trial, on the merits, any determination that the Indemnitee is not entitled to be indemnified under applicable law shall not be binding on, and shall not prejudice, the Indemnitee, the Indemnitee shall continue to be entitled to receive Expense Advance, and the Indemnitee shall not be required to reimburse the Company for any Expense Advance, unless and until a final judicial determination is made (as to which all rights of appeal therefrom have been exhausted or lapsed) that the Indemnitee is not entitled to be so

indemnified under applicable law. The Company shall also be solely responsible for paying all costs incurred by it in defending any Claim made pursuant to this Section 2(f) challenging its determination or seeking its payment. If a determination shall have been made pursuant to Section 2(e) that the Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding commenced pursuant to this Section 2(f). In connection with any determination concerning Indemnitee's right to Indemnification, the Person or Persons making such determination shall presume that the Indemnitee is entitled to indemnification under this Agreement if the Indemnitee has submitted a request for indemnification in accordance with Section 2(d) above, and anyone seeking to overcome this presumption shall have the burden of proof and burden of persuasion, by clear and convincing evidence.

(g) To the extent that the Indemnitee has been successful on the merits or otherwise, either in defense of any Claim relating in whole or in part to an Indemnifiable Event or in defense of any claim, issue or matter therein, including dismissal without prejudice, or in prosecution of any Claim pursuant to Section 2(f), the Indemnitee shall be indemnified by the Company against all Indemnifiable Expenses and Indemnifiable Liabilities actually and reasonably incurred in connection therewith, notwithstanding an earlier determination by the Company (including by its directors, stockholders or any Independent Counsel) that the Indemnitee is not entitled to indemnification under applicable law. For purposes of this Agreement, the term "successful on the merits or otherwise" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of any Proceeding against the Indemnitee without any express finding of liability or guilt against the Indemnitee, (ii) the expiration of one-hundred twenty (120) days after the making of any claim or threat of a Proceeding without the institution of the same and without any promise or payment made to induce a settlement, and (iii) the settlement of any Proceeding pursuant to which the Indemnitee pays less than \$100,000.

(h) As soon as reasonably practicable after receipt by the Indemnitee of written notice that he or she is a party to or a participant (as a witness or otherwise) in any Claim or of any other matter in respect of which the Indemnitee intends to seek indemnification or Expense Advancement hereunder, the Indemnitee shall provide to the Company written notice thereof, including the nature of and the facts underlying such Claim or matter. The omission by the Indemnitee to so notify the Company will not relieve the Company from any liability which it may have to the Indemnitee hereunder or otherwise.

3. Indemnification for Additional Expenses. The Company shall indemnify, or cause the indemnification of, the Indemnitee against any and all Indemnifiable Expenses and, if requested by the Indemnitee, shall advance such Indemnifiable Expenses to the Indemnitee subject to and in accordance with Sections 2(b) and (e), which are actually and reasonably incurred by the Indemnitee in connection with any Claim brought by the Indemnitee for (i) indemnification or an Expense Advance by the Company under this Agreement and/or (ii) recovery under any directors' and officers' liability insurance policies maintained by the Company, regardless of whether the Indemnitee ultimately is determined to be entitled to such indemnification, Expense Advance or insurance recovery, as the case may be.

4. Partial Indemnity. If the Indemnitee is entitled under any provision of this Agreement to indemnification by the Company for some or a portion of the Indemnifiable Expenses in respect of a Claim but not, however, for all of the total amount thereof, the Company shall nevertheless indemnify the Indemnitee for the portion thereof to which the Indemnitee is entitled.

5. Burden of Proof. In connection with any determination, pursuant to Section 2(e), as to whether the Indemnitee is entitled to be indemnified hereunder, the Person or Persons making such determination shall presume that the Indemnitee has satisfied the applicable standard of conduct and is entitled to indemnification, and except where any required undertaking under Section 2(b) has not been delivered to the Company, the burden of proof shall be on the Company or its representative to overcome such presumption and establish, by clear and convincing evidence, that the Indemnitee is not so entitled.

6. Reliance as Safe Harbor. The Indemnitee shall be deemed to have met the applicable standard of conduct and to be entitled to indemnification under Delaware law for any action or omission to act undertaken (i) in good faith reliance upon the records of the Company, including its financial statements, or upon information, opinions, reports or statements furnished to the Indemnitee by the officers or employees of the Company or any of its subsidiaries in the course of their duties, or by committees of the Board of Directors, or by any other Person as to matters the Indemnitee reasonably believes are within such other Person's professional or expert competence, or (ii) on behalf of the Company in furtherance of the interests of the Company in good faith in reliance upon, and in accordance with, the advice of legal counsel or accountants, provided such legal counsel or accountants were selected with reasonable care by or on behalf of the Company. In addition, the knowledge and/or actions, or failures to act, of any director, officer, agent or employee of the Company or an Other Enterprise shall not be imputed to the Indemnitee for purposes of determining the right to indemnity hereunder.

7. No Other Presumptions. For purposes of this Agreement, the termination of any Claim, by judgment, order, settlement (whether with or without court approval) or conviction, or upon a plea of nolo contendere or its equivalent, shall not create a presumption that the Indemnitee did not meet any particular standard of conduct or have any particular belief or that a court has determined that indemnification is not permitted by applicable law. In addition, neither the failure of the Company (including by its directors, stockholders or any Independent Counsel) to have made a determination as to whether the Indemnitee has met any particular standard of conduct or had any particular belief, nor an actual determination by the Company (including by its directors, stockholders or any Independent Counsel) that the Indemnitee has not met such standard of conduct or did not have such belief, prior to the commencement of legal proceedings by the Indemnitee to secure a judicial determination that the Indemnitee should be indemnified under applicable law, shall be a defense to the Indemnitee's Claim or create a presumption that the Indemnitee has not met any particular standard of conduct or did not have any particular belief.

8. Nonexclusivity; Change in Law. The rights of the Indemnitee hereunder shall be in addition to any other rights the Indemnitee may have under the Bylaws, the laws of the State of Delaware, or otherwise. To the extent that a change in Delaware law or the interpretation thereof (whether by statute or judicial decision) permits greater indemnification by agreement than would be afforded currently under the Bylaws, it is the intent of the parties hereto that the Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change.

9. Maintenance of D&O Insurance.

(a) The Company represents that it presently has in force and effect directors' and officers' liability insurance covering the directors and officers of the Company ("D&O Insurance") under the policies with the insurance carriers, and in the amounts set forth on Annex A (the "Insurance Policies").

(b) The Company shall, from time to time, make the good faith determination whether or not it is practicable for the Company to obtain and maintain a policy or policies of insurance with reputable insurance companies providing the officers and directors of the Company with coverage for Expenses from wrongful acts, or to ensure the Company's performance of its indemnification obligations under this Agreement. Among other considerations, the Company will weigh the costs of obtaining such insurance coverage against the protection afforded by such coverage.

(c) In all policies of D&O Insurance, the Indemnitee shall be named as an insured in such a manner as to provide the Indemnitee the same rights and benefits as are accorded to the most favorably insured of the Company's directors, if the Indemnitee is a director; or as are accorded to the most favorably insured of the Company's officers, if the Indemnitee is not a director of the Company but is an officer; or as are accorded to the most favorably insured of the Company's key employees, if the Indemnitee is not an officer or director but is a key employee.

(d) Notwithstanding the foregoing, except as provided below in Section 9(f) in the event of a Change in Control, the Company shall have no obligation to obtain or maintain D&O Insurance coverage at least comparable to that provided by the Insurance Policies. All decisions as to whether and to what extent the Company maintains D&O Insurance shall be made by the Board in its sole and absolute discretion.

(e) Promptly after (i) learning of facts and circumstances which may give rise to a Proceeding, the Company shall notify its D&O Insurance carriers, if such notice is required by the applicable insurance policies, and any other insurance carrier providing applicable insurance coverage to the Company, of such facts and circumstances, or (ii) receiving notice of a Proceeding, whether from the Indemnitee, or otherwise, the Company shall give prompt notice to its D&O Insurance carriers, and any other insurance carriers providing applicable insurance coverage to the Company, in the case of (i) and (ii), in accordance with the requirements of the respective insurance policies. The Company shall, thereafter, take all necessary or appropriate action to cause such insurance carriers to pay, on behalf of the Indemnitee, all Expenses incurred or to be incurred, and liability

incurred, by the Indemnitee with respect to such Proceeding, in accordance with the terms of the applicable insurance policies.

(f) At or prior to any Change in Control, the Company shall obtain a prepaid, fully-earned and non-cancellable “tail” directors’ and officers’ liability insurance policy in respect of acts or omissions occurring at or prior to the Change in Control with a claims period of six (6) years from the Change in Control, covering the Indemnitee, to the extent that the Indemnitee is covered by D&O Insurance immediately prior to the Change in Control, with the coverage and amounts and containing terms and conditions that are not less advantageous to the directors and officers of the Company and its subsidiaries than those of the D&O Insurance in effect immediately prior to such Change in Control; *provided, however*, that the aggregate premium therefor is not in excess of 200% of the annual premium then paid by the Company for coverage for its then current policy year for such insurance, and if the premium therefor would be in excess of such amount, the Company shall purchase such “tail” policy with the greatest coverage available as to matters occurring prior to the Change in Control as is available for a cost not exceeding that premium amount. Any such tail policy may not be amended, modified, cancelled or revoked after the Change in Control by the Company or any successor thereto in any manner that is adverse to the Indemnitee.

10. **Period of Limitations.** No legal action shall be brought and no cause of action shall be asserted by or in the right of the Company (or any of its subsidiaries) against the Indemnitee, the Indemnitee’s spouse, heirs, executors or personal or legal representatives, administrators or estate after the expiration of two years from the date of accrual of such cause of action, and any claim or cause of action of the Company shall be extinguished and deemed released unless asserted by the timely filing of a legal action within such two-year period; *provided, however*, that if any shorter period of limitations is otherwise applicable to any such cause of action such shorter period shall govern.

11. **Amendments, Waiver; More Favorable Indemnification Agreements.** Except as provided in Section 8 with respect to changes in Delaware law that broaden the right of Indemnitee to be indemnified by the Company and the last sentence of this Section 11 which provides for the Indemnitee to be afforded the benefit of a more favorable term or terms included in other indemnification agreements, no supplement, modification or amendment of this Agreement shall be binding unless executed in writing by both of the parties hereto. No waiver of any of the provisions of this Agreement shall be binding unless in the form of a writing signed by the party against whom enforcement of the waiver is sought, or shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar), nor shall such waiver constitute a continuing waiver. In the event the Company or any of its subsidiaries enters into an indemnification agreement with another director, officer, agent, fiduciary or manager of the Company or any of its subsidiaries containing a term or terms more favorable to the indemnitee than the terms contained herein (as determined by the Indemnitee), the Indemnitee shall be afforded the benefit of such more favorable term or terms and such more favorable term or terms shall be deemed incorporated by reference herein as if set forth in full herein.

12. Subrogation. In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of contribution or recovery of the Indemnitee against other persons, and the Indemnitee shall execute all papers reasonably required and shall do everything that may be reasonably necessary to secure such rights, including the execution of such documents necessary to enable the Company effectively to bring suit to enforce such rights.

13. No Duplication of Payments. The Company shall not be liable under this Agreement to make any payment in connection with any Claim to the extent the Indemnitee has otherwise actually received payment (under any statute, insurance policy, any provision of the Bylaws, vote, or otherwise) of the amounts otherwise indemnifiable hereunder. The Company's obligation of indemnification or Expense Advance hereunder to the Indemnitee who is or was serving at the request of the Company as a director, officer, trustee, partner, managing member, fiduciary, board of directors' committee member, employee or agent of any other Person shall be reduced by any amount the Indemnitee has actually received as indemnification or advancement of Expenses from such Person.

14. Defense of Claims. The Company shall be entitled, at its option and expense, either to participate in the defense of any Claim relating to an Indemnifiable Event or, upon written notice to the Indemnitee, to assume the defense thereof with counsel reasonably satisfactory to the Indemnitee and after delivery of such notice, the Company shall not be liable to the Indemnitee under this Agreement for any fees or expenses of counsel subsequently incurred by the Indemnitee with respect to such Claim; provided that (i) the Indemnitee shall have the right to retain separate counsel in respect of such Claim at the Indemnitee's expense or, if previously authorized in writing by the Company, at the Company's expense, and (ii) if the Indemnitee believes, after consultation with counsel selected by the Indemnitee, that (A) the use of counsel chosen by the Company to represent the Indemnitee would present such counsel with an actual or potential conflict of interest, (B) the named parties in any such Claim (including any impleaded parties) include the Company or any subsidiary of the Company and the Indemnitee, and the Indemnitee concludes that there may be one or more legal defenses available to him or her that are different from or in addition to those available to the Company or any subsidiary of the Company, or (C) any such representation by such counsel would be precluded under the applicable standards of professional conduct then prevailing, then the Indemnitee shall be entitled to retain separate counsel (but not more than one law firm plus, if applicable, local counsel in respect of any particular Claim) at the Company's expense. The Company shall not be liable to the Indemnitee under this Agreement for any amounts paid in settlement of any Claim relating to an Indemnifiable Event effected without the Company's prior written consent. The Company shall not, without the prior written consent of the Indemnitee, effect any settlement of any Claim relating to an Indemnifiable Event which the Indemnitee is or could have been a party unless such settlement solely involves the payment of money and includes a complete and unconditional release of the Indemnitee from all liability on all claims that are the subject matter of such Claim. Neither the Company nor the Indemnitee shall unreasonably withhold its or his or her consent to any proposed settlement; provided that the Indemnitee may withhold consent to any settlement that does not provide a complete and unconditional release of the Indemnitee.

15. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to the Indemnitee for any reason whatsoever, the Company, in lieu of indemnifying the Indemnitee, shall contribute to the amount incurred by the Indemnitee, whether for Indemnifiable Liabilities and/or for Indemnifiable Expenses, in connection with any Claim relating to an Indemnifiable Event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Claim in order to reflect (i) the relative benefits received by the Company and the Indemnitee as a result of such Indemnifiable Event and/or (ii) the relative fault of the Company and the Indemnitee in connection with such Indemnifiable Event.

16. Services of Indemnitee; Binding Effect, Etc. The Indemnitee hereby agrees to serve or continue to serve as a director of the Company, for so long as the Indemnitee is duly elected or appointed or until the Indemnitee tenders his or her resignation or is removed. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors (including any direct or indirect successor by purchase, merger, consolidation or otherwise to all or substantially all of the business and/or assets of the Company), assigns, spouses, heirs, executors and personal and legal representatives. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation, or otherwise) to all or a significant portion of the business and/or assets of the Company and/or its subsidiaries, by written agreement in form and substance satisfactory to the Indemnitee, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. This Agreement shall continue in effect regardless of whether the Indemnitee continues to serve as an officer and/or director of the Company or any other Person at the request of the Company. Except as otherwise provided in this Section 16, neither this Agreement nor any duties or responsibilities pursuant hereto may be assigned by the Company to any other Person without the express prior written consent of the Indemnitee.

17. Entire Agreement, Severability. This Agreement and the documents referred to herein constitute the entire agreement between the parties hereto with respect to the matters covered hereby, and any other prior or contemporaneous oral or written understandings or agreements with respect to the matters covered hereby are superseded by this Agreement, provided that this Agreement is a supplement to and in furtherance of the Bylaws and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of the Indemnitee thereunder. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever, (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law, and (ii) to the fullest extent possible, the provisions of this Agreement (including all portions of any paragraph of this Agreement containing any such provision held to be invalid, illegal or unenforceable) shall be construed or deemed reformed so as to give the maximum effect to the intent of the parties hereto manifested by the provision held invalid, illegal or unenforceable and to give the maximum effect to the terms of this Agreement.

18. Specific Performance, Etc. The parties recognize that if any provision of this Agreement is violated by the Company, the Indemnitee may be without an adequate remedy at law. Accordingly, in the event of any such violation, the Indemnitee shall be entitled, if the Indemnitee so elects, to institute proceedings, either in law or at equity, to obtain damages, to enforce specific performance, to enjoin such violation, or to obtain any relief or any combination of the foregoing as the Indemnitee may elect to pursue.

19. Notices. All notices, requests, consents and other communications hereunder to any party shall be in writing and either delivered in person or sent by U.S. mail, overnight courier or by e-mail or other electronic transmission, addressed to such party at the address set forth below or such other address as may hereafter be designated on the signature pages of this Agreement or in writing by such party to the other parties, and shall be effective only upon receipt by such party:

(a) If to the Company, to:

ABM Industries Incorporated
551 Fifth Avenue, Suite 300
New York, NY 10176
Attn: General Counsel
E-mail: [●]

(b) If to the Indemnitee, to the address set forth on Annex B hereto.

20. Counterparts. This Agreement may be executed in counterparts (including by PDF or facsimile), each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

21. Headings. The headings of the sections and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction or interpretation thereof.

22. Conflict With Governing Documents. To the fullest extent permitted by applicable law, in the event of a conflict between the terms of this Agreement and the terms of the Company's Certificate of Incorporation or Bylaws, the terms of this Agreement shall prevail.

23. Cooperation and Intent. The Company shall cooperate in good faith with the Indemnitee and use its best efforts to ensure that, to the fullest extent permitted by applicable law, the Indemnitee is indemnified and/or reimbursed for Indemnifiable Expenses and Indemnifiable Liabilities described herein and receives the Expense Advance.

24. Noninterference. The Company shall not seek or agree to any order of any court or other governmental authority that would prohibit or otherwise interfere, and shall not take or fail to take any other action if such action or failure would reasonably be expected to have the effect of prohibiting or otherwise interfering, with the performance of

the Company's indemnification, advancement of Expenses or other obligations under this Agreement.

25. Governing Law; Consent to Jurisdiction. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such state without giving effect to the principles of conflicts of choice of laws of such state or any other jurisdiction. The Company and the Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Chancery Court of the State of Delaware (the "Delaware Court"), and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (iv) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

ABM INDUSTRIES INCORPORATED

By: _____
Name: _____
Title: _____

[Indemnitee Name]

Annex A
INSURANCE POLICIES

Annex B

Name and Address

- [•]
- [•]