

United States  
Securities and Exchange Commission  
Washington, DC 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): July 25, 2023

PERFICIENT, INC.  
(Exact Name of Registrant as Specified in its Charter)

<b>Delaware</b> (State or Other Jurisdiction of Incorporation)	<b>001-15169</b> (Commission File Number)	<b>74-2853258</b> (IRS Employer Identification No.)
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555 Maryville University Drive  
Suite 600  
Saint Louis, Missouri 63141  
(Address of principal executive offices)  
(314) 529-3600  
(Registrant's telephone number, including area code)

**Not Applicable**  
(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))

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, \$0.001 par value	PRFT	The Nasdaq Global Select Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company

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

## ITEM 2.02 RESULTS OF OPERATIONS AND FINANCIAL CONDITION

On July 27, 2023, Perficient, Inc. (“Perficient” or the “Company”) announced its financial results for the three and six months ended June 30, 2023. A copy of the press release is being furnished as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated by reference into this Item 2.02.

In accordance with General Instruction B.2 of Form 8-K, the information in this Current Report on Form 8-K, including Exhibits 99.1 and 99.2, shall not be deemed “filed” for the purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that Section, nor shall such information and Exhibits be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing.

## ITEM 5.02 DEPARTURE OF DIRECTORS OR CERTAIN OFFICERS; ELECTION OF DIRECTORS; APPOINTMENT OF CERTAIN OFFICERS; COMPENSATORY ARRANGEMENTS OF CERTAIN OFFICERS

Executive Transition and New Director, Each Effective October 1, 2023. On July 27, 2023, the Company announced that effective as of October 1, 2023, Jeffrey S. Davis, the current Chief Executive Officer, will become the Executive Chairman of the Company, an employee position, and Thomas J. Hogan, the current President, will become the Chief Executive Officer of the Company (the “Executive Transition”). In connection with the Executive Transition and also effective as of October 1, 2023, the Board of Directors of the Company (the “Board”) approved an increase in the size of the Board from eight directors to nine directors and appointed Mr. Hogan to fill the newly-created vacancy. As an employee director, Mr. Hogan will not be entitled to any additional compensation for his service as a director. Mr. Hogan was not appointed pursuant to any arrangement or understanding with any other person. Mr. Hogan will not be joining any committee of the Board at the effective date of his appointment. The Company issued a press release which included the announcement of the Executive Transition and Mr. Hogan’s appointment to the Board, dated as of the date hereof, which is filed as an exhibit to this current report on Form 8-K.

Davis Employment Agreement. In connection with the Executive Transition, the Company entered into a fifth amended and restated employment and transition agreement with Mr. Davis on July 25, 2023 (the “Davis Employment Agreement”), which amended and restated his previous agreement with certain changes, including for Mr. Davis to serve as our Executive Chairman. The Davis Employment Agreement is effective as of October 1, 2023 and will expire on February 29, 2024 but shall continue on a month-to-month basis thereafter. Mr. Davis’ previous employment agreement with the Company was effective February 23, 2021 and was set to expire on December 31, 2023 and will continue in accordance with its terms until September 30, 2023. The Davis Employment Agreement has the following terms:

- an annual salary of \$67,500 that may be increased by the Board or its Compensation Committee (the “Compensation Committee”) from time to time;
- an annual performance bonus calculated in accordance with his previous employment agreement (up to 300% of Mr. Davis’s annual salary), with the amount of such bonus prorated to 75% of the amount otherwise payable, in the event the Company achieves certain performance targets (Mr. Davis will not be entitled to a bonus beginning January 1, 2024);
- entitlement to participate in such insurance, disability, health, and medical benefits and retirement plans or programs as are from time to time generally made available to executive employees of the Company, pursuant to the policies of the Company and subject to the conditions and terms applicable to such benefits, plans or programs;
- death, disability, severance, and change of control benefits upon Mr. Davis’s termination of employment or change of control of the Company, including a severance of two year’s base salary, one year’s target bonus calculated at his target bonus rate in effect as of the expiration of his previous employment agreement, and one year of benefits (and vesting of all unvested options and restricted shares) if Mr. Davis is terminated without cause or under a constructive termination, as defined in the Davis Employment Agreement; and
- 100% of all unvested options and restricted shares vest upon a change in control.

Mr. Davis has agreed to refrain from competing with the Company for a period of three years following the termination of his employment. Mr. Davis’s compensation is subject to review and adjustment on an annual basis in accordance with the Company’s compensation policies as in effect from time to time.

Hogan Employment Agreement. Also in connection with the Executive Transition, the Company entered into a third amended and restated employment agreement with Mr. Hogan on July 25, 2023 (the “Hogan Employment Agreement”), which amended and restated his previous agreement with certain changes, including for Mr. Hogan to serve as our Chief Executive Officer and President. The Hogan Employment Agreement is effective as of October 1, 2023 and will expire December 31, 2026. Mr. Hogan’s previous employment agreement with the Company was effective February 23, 2021 and was set to expire on December 31, 2023 and will continue in accordance with its terms until September 30, 2023. The Hogan Employment Agreement has the following terms:

- an annual salary of \$600,000 that may be increased by the Board of Directors or the Compensation Committee from time to time;
- an annual performance bonus of up to 200% of Mr. Hogan's annual salary in the event the Company achieves certain performance targets;
- entitlement to participate in such insurance, disability, health, and medical benefits and retirement plans or programs as are from time to time generally made available to executive employees of the Company, pursuant to the policies of the Company and subject to the conditions and terms applicable to such benefits, plans or programs;
- death, disability, severance, and change of control benefits upon Mr. Hogan's termination of employment or change of control of the Company, including a severance of one year's base salary, one year's target bonus prorated to the date of termination, one year of benefits and one year of vesting of options and restricted stock if Mr. Hogan is terminated without cause or under a constructive termination, as defined in the Hogan Employment Agreement; and
- if Mr. Hogan is terminated without cause or under a constructive termination within three months prior to, or 18 months after, a change in control, additional severance benefits of one year's base salary and vesting of 100% of all unvested options and restricted shares.

In connection with the Executive Transition, the Company approved the issuance pursuant to the Company's long-term incentive plan of a performance award with a grant date fair value of \$1,000,000 to Mr. Hogan. This award is subject to a three-year vesting term and performance conditions based on the Company's relative total shareholder return over the three-year performance period. In the event Mr. Hogan is terminated without cause or under a constructive termination or in connection with a change in control as noted above, 50% of the shares subject to the award are deemed earned and vested with the remainder forfeited.

Mr. Hogan has agreed to refrain from competing with the Company for a period of three years following the termination of his employment. Mr. Hogan's compensation is subject to review and adjustment on an annual basis in accordance with the Company's compensation policies as in effect from time to time.

Martin Employment Agreement. The Company also entered into a fourth amended and restated employment agreement with Paul E. Martin, our Chief Financial Officer, on July 25, 2023 (the "Martin Employment Agreement"), which amended and restated his previous agreement on substantially the same terms with certain changes. The Martin Employment Agreement is effective as of October 1, 2023 and will expire on December 31, 2026. Mr. Martin's previous employment agreement with the Company was effective January 1, 2021 and was set to expire on December 31, 2023 and will continue in accordance with its terms until September 30, 2023. The Martin Employment Agreement has the following material terms:

- an annual salary of \$460,000 that may be increased by the Chief Executive Officer, with approval by the Board of Directors or its Compensation Committee, from time to time;
- an annual performance bonus of up to 150% of Mr. Martin's annual salary in the event the Company achieves certain performance targets;
- entitlement to participate in such insurance, disability, health, and medical benefits and retirement plans or programs as are from time to time generally made available to executive employees of the Company, pursuant to the policies of the Company and subject to the conditions and terms applicable to such benefits, plans or programs;
- death, disability, severance, and change of control benefits upon Mr. Martin's termination of employment or change of control of the Company, including a severance of one year's base salary, one year of benefits and one year of vesting of options and restricted stock if Mr. Martin is terminated without cause or under a constructive termination, as defined in the agreement; and
- 50% of all unvested options and restricted shares vest upon a change in control.

Mr. Martin has agreed to refrain from competing with the Company for a period of three years following the termination of his employment. Mr. Martin's compensation is subject to review and adjustment on an annual basis in accordance with the Company's compensation policies as in effect from time to time.

The foregoing is a summary of the material terms of Messrs. Davis', Hogan's and Martin's employment agreements and Mr. Hogan's performance award only, and is qualified in its entirety by the actual terms of the agreements which will be filed as exhibits to the Company's quarterly report on Form 10-Q for the quarter ended June 30, 2023.

#### **ITEM 5.03 AMENDMENTS TO ARTICLES OF INCORPORATION OR BYLAWS; CHANGE IN FISCAL YEAR**

On July 25, 2023, the Board approved and adopted an amendment and restatement the Company's bylaws (as amended and restated, the "Second Amended and Restated Bylaws"), effective as of that date. The amendments contained in the Second Amended and Restated Bylaws include, among other things:

- modifying Section 3.2 to provide for requirements and procedures for stockholder proxy solicitations;
- revising Sections 3.1, and 4.5 to allow for the Board to conduct stockholder meetings by means of remote communications and to allow directors to participate in Board meetings by means of remote communications;
- adding Section 3.12 to reflect the Board's practice to appoint one or more inspectors at meetings of stockholders; and

- incorporating other technical and conforming revisions and clarifications.

The foregoing is a summary of the Second Amended and Restated Bylaws only, and is qualified in its entirety by the full text of the Second Amended and Restated Bylaws, a copy of which is filed as Exhibit 3.1 to this current report on Form 8-K.

#### ITEM 7.01 REGULATION FD DISCLOSURE

##### Financial Results Presentation

On July 27, 2023, Perficient posted on the Investor Relations page of its website at [www.perficient.com](http://www.perficient.com) a slide presentation related to its second quarter ended June 30, 2023 financial results and operating metrics. A copy of the slide presentation is furnished as Exhibit 99.2 to this Current Report on Form 8-K. The information contained or incorporated in our website is not part of this filing.

#### ITEM 9.01 FINANCIAL STATEMENTS AND EXHIBITS

(d) Exhibits.

<b>Exhibit Number</b>	<b>Description</b>
<a href="#">3.1</a>	Second Amended and Restated Bylaws
<a href="#">99.1</a>	Perficient, Inc. Press Release, dated July 27, 2023, announcing financial results for the three and six months ended June 30, 2023
<a href="#">99.2</a>	Perficient, Inc. Q2 2023 Financial Results Presentation
<a href="#">99.3</a>	Perficient, Inc. Press Release, dated July 27, 2023, announcing the Executive Transition
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

**SIGNATURE**

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

Date: July 27, 2023

By: /s/ Paul E. Martin  
Paul E. Martin  
Chief Financial Officer

SECOND AMENDED AND RESTATED  
BYLAWS  
OF  
PERFICIENT, INC.,  
A DELAWARE CORPORATION

(Adopted July 25, 2023)

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**SECOND AMENDED AND RESTATED  
BYLAWS  
OF PERFCIENT, INC.,  
A DELAWARE CORPORATION**

**ARTICLE I - OFFICES**

**Section 1.2 REGISTERED OFFICE.** The registered office of the corporation shall be the registered office named in the certificate of incorporation of the corporation, or such other office as may be designated from time to time by the Board of Directors in the manner provided by law.

**Section 2.2 OTHER OFFICES.** The corporation may have offices at such other places both within and without the State of Delaware as the Board of Directors may from time to time determine or the business of the corporation may require. The books of the corporation may be kept (subject to any provision contained in the Delaware General Corporation Law) outside the State of Delaware at such place or places as may be designated from time to time by the Board of Directors or in these Bylaws.

**ARTICLE II - CORPORATE SEAL**

**Section 2.1 CORPORATE SEAL.** The corporate seal shall consist of a die bearing the name of the corporation. Said seal may be used by causing it, or a facsimile thereof, to be impressed or affixed or reproduced or otherwise.

**ARTICLE III - STOCKHOLDERS' MEETINGS**

**Section 3.1 PLACE OF MEETINGS.** Meetings of the stockholders of the corporation shall be held at such place, either within or without the State of Delaware, or by means of remote communication, as may be designated from time to time by the Board of Directors and stated in the notice of meeting.

**Section 3.2 ANNUAL MEETING.**

a. The annual meeting of the stockholders of the corporation, for the purpose of election of directors and for such other business as may lawfully come before it, shall be held on such date and at such time as may be designated from time to time by the Board of Directors and stated in the notice of meeting.

b. At an annual meeting of the stockholders, only such business shall be conducted as shall have been properly brought before the meeting. To be properly brought before an annual meeting, business must be: (A) specified in the notice of meeting (or any supplement thereto) given by or at the direction of the Board of Directors; (B) otherwise properly brought before the meeting by or at the direction of the Board of Directors; or (C) otherwise properly brought before the meeting by a stockholder. For business to be properly brought before an annual meeting by a stockholder, the stockholder must have given timely notice thereof in writing to the Secretary of the corporation. To be timely, a stockholder's notice must be delivered to or mailed and received at the principal executive offices of the corporation not less than one hundred twenty (120) calendar days in advance of the anniversary date of the Notice of Annual Meeting released to stockholders in connection with the previous year's annual meeting of stockholders; provided, however, that in the event that no annual meeting was held in the previous year or the date of the annual meeting has been changed by more than thirty (30) days from the date contemplated at the time of the previous year's Notice of Annual Meeting, notice by the stockholder to be timely must be so received a reasonable time before the Notice of Annual Meeting is released to stockholders. In no event shall any adjournment, recess or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above. A stockholder's notice to the Secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (i) a brief description of the business desired to be brought before the annual meeting and the reasons for conducting such business at the

annual meeting; (ii) the name and address, as they appear on the corporation's books, of the stockholder proposing such business; (iii) the class and number of shares of the corporation which are beneficially owned by the stockholder; (iv) any material interest of the stockholder in such business; and (v) any other information that is required to be provided by the stockholder pursuant to Regulation 14A under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), in such stockholder's capacity as a proponent of a stockholder proposal. Notwithstanding anything in these Bylaws to the contrary, no business shall be conducted at any annual meeting except in accordance with the procedures set forth in this paragraph. The chairman of the annual meeting shall, if the facts warrant, determine and declare at the meeting that business was not properly brought before the meeting and in accordance with the provisions of this paragraph, and, if the chairman should so determine, the chairman shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

c. Only persons who are nominated in accordance with the procedures set forth in this paragraph shall be eligible for election as directors. Nominations of persons for election to the Board of Directors of the corporation may be made at a meeting of stockholders by or at the direction of the Board of Directors or by any stockholder of the corporation entitled to vote in the election of directors at the meeting who complies with the notice procedures set forth in this paragraph and Regulation 14A of the Exchange Act, including, without limitation, Rule 14a-19. Such stockholder shall ensure that the proxy cards used by such stockholder to solicit proxies or votes in support of the nominees of such nomination are printed on a proxy card of any color but white, which such color shall be reserved for the exclusive use of the Board of Directors. Such nominations, other than those made by or at the direction of the Board of Directors, shall be made pursuant to timely notice in writing to the Secretary of the corporation in accordance with the provisions of paragraph (b) of this Section 3.2 and Regulation 14A of the Exchange Act, including, without limitation, Rule 14a-19. Such stockholder's notice shall set forth (i) as to each person, if any, whom the stockholder proposes to nominate for election or re-election as a director: (A) the name, age, business address and residence address of such person; (B) the principal occupation or employment of such person; (C) the class and number of shares of the corporation which are beneficially owned by such person; (D) a description of all arrangements or understandings between the stockholder and each nominee and any other person or persons (naming such person or persons) pursuant to which the nominations are to be made by the stockholder; and (E) any other information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required in each case pursuant to Regulation 14A, including, without limitation, Rule 14a-19 under the Exchange Act (such other information including, without limitation, such person's written consent to being named in any applicable proxy statement as a nominee and to serving as a director if elected); (ii) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (b) of this Section 3.2; and (iii) a representation that such stockholder (A) intends to solicit proxies from stockholders representing at least 67% of the voting power of the shares entitled to vote on the election of directors, in accordance with Rule 14a-19 under the Exchange Act, and shall include a statement to that effect on the proxy statement or the form of proxy of such stockholder; (B) shall otherwise comply with the requirements of Rule 14a-19; and (C) such stockholder shall provide the corporation, no later than five (5) business days prior to the applicable meeting of the stockholders, reasonable documentary evidence (as determined in good faith by the corporation) that such stockholder has complied with such requirements of Rule 14a-19 under the Exchange Act. At the request of the Board of Directors, any person nominated by a stockholder for election as a director shall furnish to the Secretary of the corporation that information required to be set forth in the stockholder's notice of nomination which pertains to the nominee.

No person shall be eligible for election as a director of the corporation unless nominated in accordance with the procedures set forth in this paragraph and the requirements of Regulation 14A under the Exchange Act, including, without limitation, Rule 14a-19. Pursuant to Rule 14a-19 under the Exchange Act, a stockholder making such a nomination shall provide the corporation, no later than five (5) business days prior to the applicable meeting of the stockholders, reasonable documentary evidence (as determined in good faith by the corporation) that such stockholder has complied with such requirements of Rule 14a-19 under the Exchange Act. The chairman of the meeting shall, if the facts warrant, determine and declare at the meeting that a nomination was not made in accordance with the procedures prescribed by these Bylaws and the requirements of Regulation 14A, including, without limitation, Rule 14a-19 under the Exchange Act, and if the chairman should so determine, the chairman shall so declare at the meeting,

and the defective nomination shall be disregarded. In the event that the corporation receives votes or proxies for the nominees of such defective nomination, such votes or proxies shall be disregarded. In no event shall any adjournment, recess or postponement of an annual meeting or the announcement thereof commence a new time period for the giving of a stockholder's notice as described above

If at any time such stockholder no longer intends to solicit proxies in accordance with the provisions of this Section 3.2 and Rule 14a-19 under the Exchange Act, including, without limitation, the requirement that such stockholder solicit proxies from stockholders representing at least 67% of the voting power of the shares entitled to vote on the election of directors, such stockholder shall notify the corporation within three (3) business days of such change in intention.

### **Section 3.3 SPECIAL MEETINGS.**

a. Special meetings of the stockholders of the corporation may only be called, for any purpose or purposes, by (i) the Chairman of the Board of Directors, (ii) the President, (iii) the Board of Directors pursuant to a resolution adopted by a majority of the total number of authorized directors (whether or not there exist any vacancies in previously authorized directorships at the time any such resolution is presented to the Board of Directors for adoption), or (iv) the Secretary in accordance with paragraph (c) below (each, a "Special Meeting Request").

b. If a special meeting is called pursuant to paragraph (a) above by any person or persons other than the Board of Directors, the request shall be in writing, specifying the general nature of the business proposed to be transacted, and shall be delivered personally or sent by registered mail or by telegraphic or other facsimile transmission to the Chairman of the Board of Directors, the President, or the Secretary of the corporation. No business may be transacted at such special meeting otherwise than specified in such notice. The Board of Directors shall determine the time and place of such special meeting, which shall be held not less than thirty-five (35) nor more than one hundred twenty (120) days after the date of the receipt of the request. Upon determination of the time and place of the meeting, the officer receiving the request shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the receipt of the request, the person or persons requesting the meeting may set the time and place of the meeting and give the notice. Nothing contained in this paragraph (b) shall be construed as limiting, fixing or affecting the time when a meeting of stockholders called by action of the Board of Directors may be held.

c. A special meeting of the stockholders (a "Stockholder Requested Special Meeting") shall be called by the Secretary upon the written request of the stockholders of record having an aggregate "net long position" (as defined below) of at least twenty-five percent (25%) of the outstanding shares of the corporation, and having held such net long position continuously for at least one year, as of the date of such request (the "Required Percentage"), subject to paragraph (d) below. "Net long position" shall be determined with respect to each requesting stockholder in accordance with the definition set forth in Rule 14e-4 under the Exchange Act, provided that (A) for the purposes of such definition, in determining such stockholder's "short position," that reference in such Rule to "the date that a tender offer is first publicly announced or otherwise made known by the bidder to holders of the security to be acquired" shall be the date of the relevant Special Meeting Request and all dates in the one-year period prior thereto, and the reference to the "the highest tender offer price or stated amount of the consideration offered for the subject security" shall refer to the closing sales price of the corporation's shares on The Nasdaq Global Select Market on such corresponding date (or, if such date is not a trading day, the immediately preceding trading day) and (B) the net long position of such stockholder shall be reduced by the number of shares as to which such stockholder does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such stockholder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares. Whether the requesting stockholders have complied with the requirements of this paragraph (c) and related provisions of these Bylaws shall be determined in good faith by the Board of Directors, which determination shall be conclusive and binding on the corporation and the stockholders.

d. In order for a Stockholder Requested Special Meeting to be called, one or more requests for a special meeting (each, a “Stockholder Special Meeting Request,” and collectively, the “Stockholder Special Meeting Requests”) must be signed by the Required Percentage of stockholders (or their duly authorized agents) and must be delivered to the Secretary. The Stockholder Special Meeting Requests shall be delivered to the Secretary at the principal executive offices of the corporation by registered mail or by telegraphic or other facsimile transmission. Each Stockholder Special Meeting Request shall (A) set forth a statement of the specific purpose(s) of the meeting and the matters proposed to be acted on at it, (B) bear the date of signature of each such stockholder (or duly authorized agent) signing the Stockholder Special Meeting Request, (C) set forth (i) the name and address, as they appear on the corporation’s books, of each stockholder signing such request (or on whose behalf the Stockholder Special Meeting Request is signed), (ii) the class and the number of shares of the corporation which are owned of record and beneficially by the stockholder, (iii) the number of shares as to which such stockholder does not, or will not, have the right to vote or direct the vote at the Stockholder Requested Special Meeting or as to which such stockholder has entered into any derivative or other agreement, arrangement or understanding that hedges or transfers, in whole or in part, directly or indirectly, any of the economic consequences of ownership of such shares and (iv) include documentary evidence of such stockholder’s record and beneficial ownership of such shares, (D) set forth all information relating to each such stockholder that must be disclosed in solicitations of proxies for election of directors in an election contest (even if an election contest is not involved), or is otherwise required, in each case, pursuant to Regulation 14A under the Exchange Act and (E) contain the information required by Section 3.2(b) of these Bylaws. Upon the request of the Board of Directors, any requesting stockholder shall provide such additional information the Board of Directors deems reasonably necessary to determine the requesting stockholder’s compliance with Section 3.3(c) of these Bylaws. Any requesting stockholder may revoke such Stockholder Special Meeting Request at any time by written revocation delivered to the Secretary at the principal executive offices of the corporation, and if, following such revocation, there are un-revoked requests from stockholders holding in the aggregate less than the Required Percentage, the Board of Directors, in its discretion, may cancel the special meeting.

e. Notwithstanding the foregoing, the Secretary shall not be required to call a Stockholder Requested Special Meeting if (A) the Board of Directors calls an annual or special meeting of stockholders to be held not later than sixty (60) days after the date on which a valid Stockholder Special Meeting Request has been delivered to the Secretary (the “Delivery Date”); or (B) the Stockholder Special Meeting Request (i) is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting and ending on the date of the next annual meeting; (ii) contains an identical or substantially similar item (a “Similar Item”) to an item that was presented at any meeting of stockholders held within twelve (12) months prior to the Delivery Date (and, for purposes of this clause (ii), the election of directors shall be deemed a “Similar Item” with respect to all items of business involving the election or removal of directors); (iii) relates to an item of business that is not a proper subject for action by the party requesting the special meeting under applicable law; (iv) was made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; or (v) does not comply with the provisions of this Section 3.3.

f. Each Stockholder Requested Special Meeting shall be held at such date and time as may be fixed by the Board of Directors; provided, however, that the date of any Stockholder Requested Special Meeting shall be not more than sixty (60) days after the record date for such meeting (the “Meeting Record Date”), which shall be fixed in accordance with Section 7.4 of these Bylaws. Upon determination of the time and place of the meeting, the corporation shall cause notice to be given to the stockholders entitled to vote, in accordance with the provisions of Section 3.4 of these Bylaws. If the notice is not given within sixty (60) days after the Delivery Date, then such meeting shall be held at 9:00 a.m. local time on the 60th day after the Meeting Record Date at the corporation’s principal executive offices. In fixing a date and time for any Stockholder Requested Special Meeting, the Board of Directors may consider such factors as it deems relevant within the good faith exercise of business judgment, including, without limitation, the nature of the matters to be considered, the facts and circumstances surrounding any request for meeting and any plan of the Board of Directors to call an annual meeting or a special meeting. Business transacted at any Stockholder Requested Special Meeting shall be limited to the purpose(s) stated in the Stockholder Special Meeting Request; provided, however, that nothing herein shall prohibit the Board of Directors from submitting matters to the stockholders at any Stockholder Requested Special Meeting.

**Section 3.4 NOTICE OF MEETINGS.** Except as otherwise provided by law or the certificate of incorporation of the corporation, as the same may be amended or restated from time to time and including any certificates of designation thereunder (hereinafter, the "Certificate of Incorporation"), written notice of each meeting of stockholders shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting, such notice to specify the place, if any, date, time, means of remote communication, if any, and purpose or purposes of the meeting. Notice of any meeting of stockholders may be waived in writing, signed by the person entitled to notice thereof, either before or after such meeting, and will be waived by any stockholder by his attendance thereat in person or by proxy, except when the stockholder 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. Any stockholder so waiving notice of such meeting shall be bound by the proceedings of any such meeting in all respects as if due notice thereof had been given.

**Section 3.5 QUORUM.** At all meetings of stockholders, except where otherwise provided by statute or by the Certificate of Incorporation, or by these Bylaws, the presence, in person or by proxy duly authorized, of the holders of a majority of the outstanding shares of stock entitled to vote shall constitute a quorum for the transaction of business. In the absence of a quorum, any meeting of stockholders may be adjourned, from time to time, either by the chairman of the meeting or by vote of the holders of a majority of the shares represented thereat, but no other business shall be transacted at such meeting. The stockholders present at a duly called or convened meeting, at which a quorum is present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough stockholders to leave less than a quorum. Except as otherwise provided by law, the Certificate of Incorporation or these Bylaws, all action taken by the holders of a majority of the votes cast, excluding abstentions, at any meeting at which a quorum is present shall be valid and binding upon the corporation, including, without limitation, in the election of directors. In the event of a proxy contest or the number of nominees for director exceeds the number of directors to be elected, directors shall be elected by a plurality of the votes of the shares represented in person or by proxy at any meeting of stockholders, at which a quorum is present, held to elect directors and entitled to vote on such election of directors. Where a separate vote by a class or classes is required, a majority of the outstanding shares of such class or classes, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter and the affirmative vote of the majority of shares of such class or classes present in person or represented by proxy at the meeting shall be the act of such class.

**Section 3.6 ADJOURNMENT AND NOTICE OF ADJOURNED MEETINGS.** Any meeting of stockholders, whether annual or special, may be adjourned from time to time either by the chairman of the meeting or by the vote of a majority of the shares casting votes, excluding abstentions. When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting.

**Section 3.7 VOTING RIGHTS.** For the purpose of determining those stockholders entitled to vote at any meeting of the stockholders, except as otherwise provided by law, only persons in whose names shares stand on the stock records of the corporation on the record date, as provided in Section 3.9 of these Bylaws, shall be entitled to vote at any meeting of stockholders. Every person entitled to vote or execute consents shall have the right to do so either in person or by an agent or agents authorized by a written proxy executed by such person or his duly authorized agent, which proxy shall be filed with the Secretary at or before the meeting at which it is to be used. An agent so appointed need not be a stockholder. No proxy shall be voted after three (3) years from its date of creation unless the proxy provides for a longer period. Elections of directors need not be by written ballot, unless otherwise provided in the Certificate of Incorporation.

**Section 3.8 JOINT OWNERS OF STOCK.** If shares or other securities having voting power stand of record in the names of two (2) or more persons, whether fiduciaries, members of a partnership, joint tenants, tenants in common, tenants by the entirety, or otherwise, or if two (2) or more persons have the same fiduciary relationship respecting the same shares, unless the Secretary is given

written notice to the contrary and is furnished with a copy of the instrument or order appointing them or creating the relationship wherein it is so provided, their acts with respect to voting shall have the following effect: (a) if only one (1) votes, his act binds all; (b) if more than one (1) votes, the act of the majority so voting binds all; or (c) if more than one (1) votes, but the vote is evenly split on any particular matter, each faction may vote the securities in question proportionally, or may apply to the Delaware Court of Chancery for relief as provided in the General Corporation Law of Delaware, Section 217(b). If the instrument filed with the Secretary shows that any such tenancy is held in unequal interests, a majority or even-split for the purpose of clause (c) shall be a majority or even-split in interest.

**Section 3.9 LIST OF STOCKHOLDERS.** The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at said meeting, arranged in alphabetical order, showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list was provided with the notice of the meeting; or (b) during ordinary business hours, for a period of at least ten (10) days prior to the meeting, either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not specified, at the place where the meeting is to be held.

**Section 3.10 NO ACTION WITHOUT MEETING.** Effective upon the closing of the corporation's initial public offering (the "Initial Public Offering") of its capital stock pursuant to an effective registration statement filed under the Securities Act of 1933, as amended, the stockholders of the corporation may not take action by written consent without a meeting and must take any actions at a duly called annual or special meeting.

**Section 3.11 ORGANIZATION.**

a. At every meeting of stockholders, unless another officer of the corporation has been appointed by the Board of Directors, the Chairman of the Board of Directors, or, if a Chairman has not been appointed, is absent, or designates the next senior officer present to so act, the President, or, if the President is absent, the most senior Vice President present, or, in the absence of any such officer, a chairman of the meeting chosen by a majority in interest of the stockholders entitled to vote, present in person or by proxy, shall act as chairman. The Secretary, or, in his absence, an Assistant Secretary directed to do so by the President, shall act as secretary of the meeting.

b. The Board of Directors of the corporation shall be entitled to make such rules or regulations for the conduct of meetings of stockholders as it shall deem necessary, appropriate or convenient. Subject to such rules and regulations of the Board of Directors, if any, the chairman of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are necessary, appropriate or convenient for the proper conduct of the meeting, including, without limitation, establishing an agenda or order of business for the meeting, rules and procedures for maintaining order at the meeting and the safety of those present, limitations on participation in such meeting to stockholders of record of the corporation and their duly authorized and constituted proxies and such other persons as the chairman shall permit, restrictions on entry to the meeting after the time fixed for the commencement thereof, limitations on the time allotted to questions or comments by participants and regulation of the opening and closing of the polls for balloting on matters which are to be voted on by ballot. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with rules of parliamentary procedure.

**Section 3.12 INSPECTORS AT MEETINGS OF STOCKHOLDERS.** In advance of any meeting of the stockholders, the Board of Directors shall, appoint one or more inspectors, who may be employees of the corporation, to act at the meeting or any adjournment thereof and make a written report thereof. The Board of Directors may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of the inspector's duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of their ability. The inspector or inspectors may

appoint or retain other persons or entities to assist the inspector or inspectors in the performance of their duties. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders, the inspector or inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election. When executing the duties of inspector, the inspector or inspectors shall:

- a. ascertain the number of shares outstanding and the voting power of each;
- b. determine the shares represented at the meeting and the validity of proxies and ballots;
- c. count all votes and ballots;
- d. determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors; and
- e. certify their determination of the number of shares represented at the meeting and their count of all votes and ballots.

#### **ARTICLE IV - DIRECTORS**

**Section 4.1 NUMBER AND TERM OF OFFICE; CLASSIFICATION.** The number of directors which shall constitute the whole Board of Directors shall be determined from time to time by the Board of Directors (provided that no decrease in the number of directors which would have the effect of shortening the term of an incumbent director may be made by the Board of Directors), provided that the number of directors shall be not less than one (1). At each annual meeting of stockholders, directors of the corporation shall be elected to hold office until the next annual meeting of stockholders or until their successors have been duly elected and qualified or until such director's earlier death, resignation or due removal; except that if any such election shall not be so held, such election shall take place at a stockholders' meeting called and held in accordance with the Delaware General Corporation Law. Directors need not be stockholders unless so required by the Certificate of Incorporation. If, for any reason, the directors shall not have been elected at an annual meeting, they may be elected as soon thereafter as convenient at a special meeting of the stockholders called for that purpose in the manner provided in these Bylaws.

**Section 4.2 POWERS.** The powers of the corporation shall be exercised, its business conducted and its property controlled by the Board of Directors, except as may be otherwise provided by statute or by the Certificate of Incorporation.

**Section 4.3 VACANCIES AND NEWLY CREATED DIRECTORSHIPS.** Vacancies and newly created directorships resulting from any increase in the authorized number of directors may be filled by vote of a majority of the remaining members of the Board of Directors, although less than a quorum, at any meeting of the Board of Directors, or by a sole remaining director. Each director so elected shall hold office for the unexpired portion of the term of the director whose place shall be vacant and until his or her successor shall have been duly elected and qualified or until such director's earlier death, resignation or due removal.

**Section 4.4 RESIGNATION.** Any director may resign at any time by delivering his or her written resignation to the Secretary, such resignation to specify whether it will be effective at a particular time, upon receipt by the Secretary or at the pleasure of the Board of Directors. If no such specification is made, it shall be deemed effective at the pleasure of the Board of Directors. When one or more directors shall resign from the Board of Directors, effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office for the unexpired portion of the term of the director whose place shall be vacated and until his successor shall have been duly elected and qualified.



**Section 4.5 MEETINGS.**

a. **ANNUAL MEETINGS.** Unless the Board shall determine otherwise, the annual meeting of the Board of Directors shall be held immediately before or after the annual meeting of stockholders and at the place where such meeting is held. No notice of an annual meeting of the Board of Directors shall be necessary and such meeting shall be held for the purpose of electing officers and transacting such other business as may lawfully come before it.

b. **REGULAR MEETINGS.** Except as hereinafter otherwise provided, regular meetings of the Board of Directors shall be held in the principal executive offices of the corporation. Unless otherwise restricted by the Certificate of Incorporation, regular meetings of the Board of Directors may also be held at any place within or without the State of Delaware which has been designated by resolution of the Board of Directors or the written consent of all directors.

c. **SPECIAL MEETINGS.** Unless otherwise restricted by the Certificate of Incorporation, and subject to the notice requirements contained herein, special meetings of the Board of Directors may be held at any time and place within or without the State of Delaware whenever called by the Chairman of the Board, the President or any two of the directors.

d. **REMOTE MEETINGS.** Any member of the Board of Directors, or of any committee thereof, may participate in a meeting by means of remote communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting by such means shall constitute presence in person at such meeting.

e. **NOTICE OF MEETINGS.** Written notice of the time and place of all special meetings of the Board of Directors shall be given at least one (1) day before the date of the meeting. Such notice need not state the purpose or purposes of such meeting, except as may otherwise be required by law or provided for in the Certificate of Incorporation or these Bylaws. Notice of any meeting may be waived in writing at any time before or after the meeting and will be deemed waived by any director by attendance thereat, except when the director attends the meeting solely 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.

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

**Section 4.6 QUORUM AND VOTING.**

a. Unless the Certificate of Incorporation requires a greater number and except with respect to indemnification questions arising under Article XI hereof, for which a quorum shall be one-third of the exact number of directors fixed from time to time in accordance with Section 4.1 hereof, but not less than one (1), a quorum of the Board of Directors shall consist of a majority of the exact number of directors fixed from time to time in accordance with Section 4.1 of these Bylaws, but not less than one (1); provided, however, at any meeting whether a quorum be present or otherwise, a majority of the directors present may adjourn from time to time until the time fixed for the next regular meeting of the Board of Directors, without notice other than by announcement at the meeting.

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

**Section 4.7 ACTION WITHOUT MEETING.** Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of

the Board of Directors or committee, as the case may be, consent thereto in writing, and such writing or writings are filed with the minutes of proceedings of the Board of Directors or committee.

**Section 4.8 FEES AND COMPENSATION.** Directors shall be entitled to such compensation for their services as may be approved by the Board of Directors, including, if so approved, by resolution of the Board of Directors, a fixed sum and expenses of attendance, if any, for attendance at each regular or special meeting of the Board of Directors and at any meeting of a committee of the Board of Directors. Nothing herein contained shall be construed to preclude any director from serving the corporation in any other capacity as an officer, agent, employee, or otherwise and receiving compensation therefor.

**Section 4.9 COMMITTEES.**

a. **COMMITTEES.** The Board of Directors may, by resolution passed by a majority of the whole Board of Directors, from time to time appoint one or more committees as may be permitted by law. Such other committees appointed by the Board of Directors shall consist of one (1) or more members of the Board of Directors and shall have such powers and perform such duties as may be prescribed by the resolution or resolutions creating such committees, but in no event shall such committee have the power or authority to amend the Certificate of Incorporation, to adopt an agreement of merger or consolidation, to recommend to the stockholders the sale, lease or exchange of all or substantially all of the corporation's property and assets, to recommend to the stockholders of the corporation a dissolution of the corporation or a revocation of a dissolution, or to amend these Bylaws.

b. **TERM.** Each member of a committee of the Board of Directors shall serve a term on the committee coexistent with such member's term on the Board of Directors. The Board of Directors, subject to the provisions of paragraphs (a) and (b) of this Section 4.9 may at any time increase or decrease the number of members of a committee or terminate the existence of a committee. The Board of Directors may at any time for any reason remove any individual committee member and the Board of Directors may fill any committee vacancy created by death, resignation, removal or increase in the number of members of the committee. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee, and, in addition, in the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member.

c. **MEETINGS.** Unless the Board of Directors shall otherwise provide, regular meetings of any committee appointed pursuant to this Section 4.9 shall be held at such times and places as are determined by the Board of Directors, or by any such committee, and when notice thereof has been given to each member of such committee, no further notice of such regular meetings need be given thereafter. Special meetings of any such committee may be held at any place which has been determined from time to time by such committee, and may be called by any director who is a member of such committee, upon written notice to the members of such committee of the time and place of such special meeting given in the manner provided for the giving of written notice to members of the Board of Directors of the time and place of special meetings of the Board of Directors. Notice of any special meeting of any committee may be waived in writing at any time before or after the meeting and will be waived by any director by attendance thereat, except when the director attends such special meeting solely 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. A majority of the authorized number of members of any such committee shall constitute a quorum for the transaction of business, and the act of a majority of those present at any meeting at which a quorum is present shall be the act of such committee.

**Section 4.10 ORGANIZATION.** The Chairman of the Board shall preside at every meeting of the Board of Directors, if present. In the case of any meeting, if there is no Chairman of the Board or if the Chairman is not present, the Vice Chairman (if there be one) shall preside, or if there be no Vice Chairman or if the Vice Chairman is not present, a chairman chosen by a majority of the directors present shall act as chairman of such meeting. The Secretary of the corporation or, in the absence of the Secretary, any person appointed by the Chairman shall act as secretary of the meeting.

## ARTICLE V - OFFICERS

**Section 5.1 OFFICERS DESIGNATED.** The officers of the corporation shall include, if and when designated by the Board of Directors, a Chairman of the Board of Directors, a President, one or more executive and non-executive Vice Presidents (any one or more of which executive Vice Presidents may be designated as Executive Vice President or Senior Vice President or a similar title), a Secretary and a Treasurer. The Board of Directors may, at its discretion, create additional officers and assign such duties to those offices as it may deem appropriate from time to time, which offices may include a Vice Chairman of the Board of Directors, a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer one or more Assistant Secretaries and Assistant Treasurers, and one or more other officers which may be created at the discretion of the Board of Directors. Any one person may hold any number of offices of the corporation at any one time unless specifically prohibited therefrom by law. The salaries and other compensation of the officers of the corporation shall be fixed by or in the manner designated by the Board of Directors.

### Section 5.2 TENURE AND DUTIES OF OFFICERS.

a. **GENERAL.** All officers shall hold office at the pleasure of the Board of Directors and until their successors shall have been duly elected and qualified, unless sooner removed. Any officer elected or appointed by the Board of Directors may be removed at any time by the Board of Directors. If the office of any officer becomes vacant for any reason, the vacancy may be filled by the Board of Directors. Except for the Chairman of the Board and the Vice Chairman of the Board, no officer need be a director.

b. **CHAIRMAN OF THE BOARD.** The Chairman of the Board of Directors, when present, shall preside at all meetings of the Board of Directors and, unless the Chairman has designated the next senior officer to so preside, at all meetings of the stockholders. The Chairman of the Board of Directors shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time.

c. **VICE CHAIRMAN OF THE BOARD.** The Board of Directors may but is not required to assign areas of responsibility to a Vice Chairman of the Board, and, in such event, and subject to the overall direction of the Chairman of the Board and the Board of Directors, the Vice Chairman of the Board shall be responsible for supervising the management of the affairs of the corporation and its subsidiaries within the area or areas assigned and shall monitor and review on behalf of the Board of Directors all functions within such corresponding area or areas of the corporation and each such subsidiary of the corporation. The Vice Chairman of the Board shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to the Vice Chairman of the Board by the Board of Directors or the Chairman of the Board.

d. **CHIEF EXECUTIVE AND CHIEF OPERATING OFFICERS.** Subject to the control of the Board of Directors, the chief executive officer shall have general executive charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities; and subject to the control of the chief executive officer, the chief operating officer shall have general operating charge, management and control, of the properties, business and operations of the corporation with all such powers as may be reasonably incident to such responsibilities. The chief executive officer and, if and to the extent designated by the chief executive officer or the Board, the chief operating officer, may agree upon and execute all leases, contracts, evidences of indebtedness and other obligations in the name of the corporation and may sign all certificates for shares of capital stock of the corporation, and each shall have such other powers and duties as are designated in accordance with these Bylaws and as from time to time may be assigned to each by the Board of Directors.

e. **PRESIDENT.** Unless the Board of Directors otherwise determines and subject to the provisions of paragraph (d) above, the President shall be the chief executive officer and chief operating officer of the corporation. Unless the Board of Directors otherwise determines, he shall, in the absence of the Chairman of the Board, or Vice Chairman of the Board, or if there be no Chairman of the Board or Vice Chairman of the Board, preside at all meetings of the stockholders and (should he be a director) of

the Board of Directors. The President shall have such other powers and duties as designated in accordance with these Bylaws and as from time to time may be assigned to him by the Board of Directors.

f. **VICE PRESIDENTS.** Vice Presidents, by virtue of their appointment as such, shall not necessarily be deemed to be executive officers of the corporation, such status as an executive officer only being conferred if and to the extent such Vice President is placed in charge of a principal business unit, division or function (E.G., sales, administration or finance) or performs a policy-making function for the corporation (within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder). Each executive Vice President shall at all times possess, and, upon the authority of the President or the chief executive officer, any non-executive Vice President shall from time to time possess, power to sign all certificates, contracts and other instruments of the corporation, except as otherwise limited pursuant to Article VI hereof or by the Chairman of the Board, the President, chief executive officer or the Vice Chairman of the Board. Vice Presidents shall perform other duties commonly incident to their office and shall also perform such other duties and have such other powers as the Board of Directors or the President shall designate from time to time.

g. **SECRETARY.** The Secretary shall keep the minutes of all meetings of the Board of Directors, committees of the Board of Directors and the stockholders, in books provided for that purpose; shall attend to the giving and serving of all notices; may in the name of the corporation affix the seal of the corporation to all contracts and attest the affixation of the seal of the corporation thereto; may sign with the other appointed officers all certificates for shares of capital stock of the corporation; and shall have charge of the certificate books, transfer books and stock ledgers, and such other books and papers as the Board of Directors may direct, all of which shall at all reasonable times be open to inspection of any director upon application at the office of the corporation during business hours. The Secretary shall perform all other duties given in these Bylaws and other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors shall designate from time to time. The President may direct any Assistant Secretary to assume and perform the duties of the Secretary in the absence or disability of the Secretary, and each Assistant Secretary shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors or the President, shall designate from time to time.

h. **ASSISTANT SECRETARIES.** Each Assistant Secretary shall have the usual powers and duties pertaining to such offices, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to an Assistant Secretary by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Secretary. The Assistant Secretaries shall exercise the powers of the Secretary during that officer's absence or inability refusal to act.

i. **TREASURER.** The Treasurer shall keep or cause to be kept the books of account of the corporation in a thorough and proper manner and shall render statements of the financial affairs of the corporation in such form and as often as required by the Board of Directors, the Chairman of the Board, the Vice President of the Board or the President. The Treasurer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the corporation. The Treasurer shall perform other duties commonly incident to such office and shall also perform such other duties and have such other powers as the Board of Directors, the Chairman of the Board, the Vice Chairman of the Board or the President shall designate from time to time. The Chief Financial Officer of the corporation (if one is appointed) may, but need not, serve as the Treasurer.

j. **ASSISTANT TREASURERS.** Each Assistant Treasurer shall have the usual powers and duties pertaining to such office, together with such other powers and duties as designated in these Bylaws and as from time to time may be assigned to each Assistant Treasurer by the Board of Directors, the Chairman of the Board, the President, the Vice Chairman of the Board, or the Treasurer. The Assistant Treasurers shall exercise the powers of the Treasurer during that officer's absence or inability refusal to act.

**Section 5.3 DELEGATION OF AUTHORITY.** For any reason that the Board of Directors may deem sufficient, the Board of Directors may, except where otherwise provided by statute, delegate the powers or duties of any officer to any other person, and may authorize any officer to delegate

specified duties of such office to any other person. Any such delegation or authorization by the Board shall be effected from time to time by resolution of the Board of Directors.

**Section 5.4 RESIGNATIONS.** Any officer may resign at any time by giving written notice to the Board of Directors or to the President or to the Secretary. Any such resignation shall be effective when received by the person or persons to whom such notice is given, unless a later time is specified therein, in which event the resignation shall become effective at such later time. Unless otherwise specified in such notice, the acceptance of any such resignation shall not be necessary to make it effective. Any resignation shall be without prejudice to the rights, if any, of the corporation under any contract with the resigning officer.

**Section 5.5 REMOVAL.** Any officer may be removed from office at any time, either with or without cause, by the vote or written consent of a majority of the directors in office at the time, or by any committee or superior officers upon whom such power of removal may have been conferred by the Board of Directors.

#### ARTICLE VI - EXECUTION OF CORPORATE INSTRUMENTS AND VOTING OF SECURITIES OWNED BY THE CORPORATION

**Section 6.1 EXECUTION OF CORPORATE INSTRUMENTS.** The Board of Directors may, in its discretion, determine the method and designate the signatory officer or officers, or other person or persons, to execute on behalf of the corporation any corporate instrument or document, or to sign on behalf of the corporation the corporate name without limitation, or to enter into contracts on behalf of the corporation, except where otherwise provided by law or these Bylaws, and such execution or signature shall be binding upon the corporation.

Unless otherwise specifically determined by the Board of Directors or otherwise required by law, promissory notes, deeds of trust, mortgages and other evidences of indebtedness of the corporation, and other corporate instruments or documents requiring the corporate seal, and certificates of shares of stock owned by the corporation, shall be executed, signed or endorsed by the Chairman of the Board of Directors, the President, Chief Executive Officer or any executive Vice President, and upon the authority conferred by the President, Chief Executive Officer, or any non-executive Vice President, and by the Secretary or Chief Financial Officer, if any be designated, or Treasurer or any Assistant Secretary or Assistant Treasurer. All other instruments and documents requiring the corporate signature, but not requiring the corporate seal, may be executed as aforesaid or in such other manner as may be directed by the Board of Directors.

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

Unless authorized or ratified by the Board of Directors or within the agency power of an officer, no officer, agent or employee shall have any power or authority to bind the corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

**Section 6.2 VOTING OF SECURITIES OWNED BY THE CORPORATION.** All stock and other securities of other corporations owned or held by the corporation for itself, or for other parties in any capacity, shall be voted, and all proxies with respect thereto shall be executed, by the person authorized so to do by resolution of the Board of Directors, or, in the absence of such authorization, by the Chairman or Vice Chairman of the Board of Directors, Chief Executive Officer, the President, or any Vice President.

#### ARTICLE VII - SHARES OF STOCK

**Section 7.1 FORM AND EXECUTION OF CERTIFICATES.** The shares of capital stock of the corporation may be certificated or uncertificated, as provided under the Delaware General Corporation Law. If certificated, certificates for the shares of stock of the corporation shall be in such

form as is consistent with the Certificate of Incorporation and applicable law. Every holder of stock in the corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the corporation by any two authorized officers of the corporation, certifying the number of shares and the class or series owned by him in the corporation. Where such certificate is countersigned by a transfer agent other than the corporation or its employee or by a registrar other than the corporation or its employee, any other signature on the certificate may be a facsimile. In case any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent, or registrar before such certificate is issued, it may be issued with the same effect as if he were such officer, transfer agent, or registrar at the date of issue.

**Section 7.2 LOST CERTIFICATES** . A new certificate or certificates may be issued in place of any certificate or certificates theretofore issued by the corporation alleged to have been lost, stolen, or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen, or destroyed. The corporation may require, as a condition precedent to the issuance of a new certificate or certificates, the owner of such lost, stolen, or destroyed certificate or certificates, or his legal representative, to advertise the same in such manner as it shall require or to give the corporation a surety bond in such form and amount as it may direct as indemnity against any claim that may be made against the corporation with respect to the certificate alleged to have been lost, stolen or destroyed.

**Section 7.3 TRANSFERS.**

a. Transfers of record of shares of uncertificated stock of the corporation shall be made upon proper instructions from the holder of uncertificated shares. Transfers of record of shares of stock in the corporation represented by certificates shall be made only on its books by the holders thereof, in person or by attorney duly authorized and upon the surrender of a properly endorsed certificate or certificates for a like number of shares. Upon surrender to the corporation or a transfer agent of the corporation or a transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignment or authority to transfer, it shall be the duty of the corporation to issue a new certificate to the person entitled thereto, cancel the old certificate and record the transaction upon its books. The Board of Directors shall have the power and authority to make all such other rules and regulations as they may deem expedient concerning the issue, transfer and registration or the replacement of certificates for shares of capital stock of the corporation.

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

**Section 7.4 FIXING RECORD DATES.**

a. In order that the corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

b. In order that the corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more

than sixty (60) days prior to such action. If no record date is fixed by the Board of Directors, 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.

**Section 7.5 REGISTERED STOCKHOLDERS.** The corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

#### **ARTICLE VIII - OTHER SECURITIES OF THE CORPORATION**

**Section 8.1 EXECUTION OF OTHER SECURITIES.** All bonds, debentures and other corporate securities of the corporation, other than stock certificates (covered in Section 7.1), may be signed by the Chairman or Vice Chairman of the Board of Directors, the Chief Executive Officer, the President or any Vice President, or such other person as may be authorized by the Board of Directors, and the corporate seal impressed thereon or a facsimile of such seal imprinted thereon and attested by the signature of the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer; provided, however, that where any such bond, debenture or other corporate security shall be authenticated by the manual signature of a trustee under an indenture pursuant to which such bond, debenture or other corporate security shall be issued, the signatures of the persons signing and attesting the corporate seal on such bond, debenture or other corporate security may be the imprinted facsimile of the signatures of such persons. Interest coupons appertaining to any such bond, debenture or other corporate security, authenticated by a trustee as aforesaid, shall be signed by the Treasurer or an Assistant Treasurer of the corporation or such other person as may be authorized by the Board of Directors, or bear imprinted thereon the facsimile signature of such person. In case any officer who shall have signed or attested any bond, debenture or other corporate security, or whose facsimile signature shall appear thereon or on any such interest coupon, shall have ceased to be such officer before any bond, debenture or other corporate security so signed or attested shall have been delivered, such bond, debenture or other corporate security nevertheless may be adopted by the corporation and issued and delivered as though the person who signed the same or whose facsimile signature shall have been used thereon had not ceased to be such officer of the corporation.

#### **ARTICLE IX - DIVIDENDS**

**Section 9.1 DECLARATION OF DIVIDENDS.** Dividends upon the capital stock of the corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors pursuant to law at any regular or special meeting. Dividends may be paid in cash, in property, or in shares of the capital stock, subject to the provisions of the Certificate of Incorporation.

**Section 9.2 DIVIDEND RESERVE.** Before payment of any dividend, there may be set aside out of any funds of the corporation available for dividends such sum or sums as the Board of Directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends, or for repairing or maintaining any property of the corporation, or for such other purpose as the Board of Directors shall think conducive to the interests of the corporation, and the Board of Directors may modify or abolish any such reserve in the manner in which it was created.

#### **ARTICLE X - FISCAL YEAR**

The fiscal year of the corporation shall be the calendar year, unless otherwise fixed by resolution of the Board of Directors.

**ARTICLE XI. INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS**

**Section 11.1 DIRECTORS AND EXECUTIVE OFFICERS.** The corporation shall indemnify its directors and executive officers to the fullest extent not prohibited by the Delaware General Corporation Law; PROVIDED, HOWEVER, that the corporation may limit the extent of such indemnification by individual contracts with its directors and executive officers; and, PROVIDED, FURTHER, that the corporation shall not be required to indemnify any director or executive officer in connection with any proceeding (or part thereof) initiated by such person or any proceeding by such person against the corporation or its directors, officers, employees or other agents unless (i) such indemnification is expressly required to be made by law, (ii) the proceeding was authorized by the Board of Directors of the corporation, or (iii) such indemnification is provided by the corporation, in its sole discretion, pursuant to the powers vested in the corporation under the Delaware General Corporation Law.

**Section 11.2 OTHER OFFICERS, EMPLOYEES AND OTHER AGENTS.** The corporation shall have power to indemnify its other officers, employees and other agents as set forth in the Delaware General Corporation Law.

**Section 11.3 GOOD FAITH.**

a. For purposes of any determination under this Article XI, a director or executive officer shall be deemed to have acted in good faith and in a manner such officer reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal action or proceeding, to have had no reasonable cause to believe that such officer's conduct was unlawful, if such officer's action is based on information, opinions, reports and statements, including financial statements and other financial data, in each case prepared or presented by:

- i. one or more officers or employees of the corporation whom the director or executive officer believed to be reliable and competent in the matters presented;
- ii. counsel, independent accountants or other persons as to matters which the director or executive officer believed to be within such person's professional competence; and
- iii. with respect to a director, a committee of the Board upon which such director does not serve, as to matters within such committee's designated authority, which committee the director believes to merit confidence; so long as, in each case, the director or executive officer acts without knowledge that would cause such reliance to be unwarranted.

b. 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 such person reasonably believed to be in or not opposed to the best interests of the corporation, and, with respect to any criminal proceeding, that such person had reasonable cause to believe that his conduct was unlawful.

c. The provisions of this Section 11.3 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth by the Delaware General Corporation Law.

**Section 11.4 EXPENSES.** The corporation shall advance, prior to the final disposition of any proceeding, promptly following request therefor, all expenses incurred by any director or executive officer in connection with such proceeding upon receipt of an undertaking by or on behalf of such person to repay said amounts if it should be determined ultimately that such person is not entitled to be indemnified under this Article XI or otherwise.

Notwithstanding the foregoing, unless otherwise determined pursuant to Section 11.5 of this Article XI, no advance shall be made by the corporation if a determination is reasonably and promptly made (i) by the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to the proceeding, or (ii) if such quorum is not obtainable, or, even if obtainable, a quorum of



disinterested directors so directs, by independent legal counsel in a written opinion, that the facts known to the decision-making party at the time such determination is made demonstrate clearly and convincingly that such person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the corporation.

**Section 11.5 ENFORCEMENT.** Without the necessity of entering into an express contract, all rights to indemnification and advances to directors and executive officers under this Article XI shall be deemed to be contractual rights and be effective to the same extent and as if provided for in a contract between the corporation and the director or executive officer. Any right to indemnification or advances granted by this Article XI to a director or executive officer shall be enforceable by or on behalf of the person holding such right in any court of competent jurisdiction if (i) the claim for indemnification or advances is denied, in whole or in part, or (ii) no disposition of such claim is made within ninety (90) days of request therefor. The claimant in such enforcement action, if successful in whole or in part, shall also be entitled to be paid the expense of prosecuting his claim. The corporation shall be entitled to raise as a defense to any such action that the claimant has not met the standards of conduct that make it permissible under the Delaware General Corporation Law for the corporation to indemnify the claimant for the amount claimed. Neither the failure of the corporation (including its Board of Directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such action that indemnification of the claimant is proper in the circumstances because such person has met the applicable standard of conduct set forth in the Delaware General Corporation Law, nor an actual determination by the corporation (including its Board of Directors, independent legal counsel or its stockholders) that the claimant has not met such applicable standard of conduct, shall be a defense to the action or create a presumption that claimant has not met the applicable standard of conduct.

**Section 11.6 NON-EXCLUSIVITY OF RIGHTS.** The rights conferred on any person by this Article XI shall not be exclusive of any other right which such person may have or hereafter acquire under any statute, provision of the Certificate of Incorporation, Bylaws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding office. The corporation is specifically authorized to enter into individual contracts with any or all of its directors, officers, employees or agents respecting indemnification and advances, to the fullest extent not prohibited by the Delaware General Corporation Law.

**Section 11.7 SURVIVAL OF RIGHTS.** The rights conferred on any person by this Article XI shall continue as to a person who has ceased to be a director, officer, employee or other agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

**Section 11.8 INSURANCE.** To the fullest extent permitted by the Delaware General Corporation Law, the corporation, upon approval by the Board of Directors, may purchase insurance on behalf of any person required or permitted to be indemnified pursuant to this Article XI.

**Section 11.9 AMENDMENTS.** Any repeal or modification of this Article XI shall only be prospective and shall not affect the rights under this Article XI in effect at the time of the alleged occurrence of any action or omission to act that is the cause of any proceeding against any agent of the corporation.

**Section 11.10 SAVINGS CLAUSE.** If this Article XI or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each director and executive officer to the full extent not prohibited by any applicable portion of this Article XI that shall not have been invalidated, or by any other applicable law.

**Section 11.11 CERTAIN DEFINITIONS .** For the purposes of this Article XI, the following definitions shall apply:

a. The term "proceeding" shall be broadly construed and shall include, without limitation, the investigation, preparation, prosecution, defense, settlement, arbitration and appeal of, and the giving of testimony in, any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

b. The term “expenses” shall be broadly construed and shall include, without limitation, court costs, attorneys’ fees, witness fees, fines, amounts paid in settlement or judgment and any other costs and expenses of any nature or kind incurred in connection with any proceeding.

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

d. References to a “director,” “officer,” “employee,” or “agent” of the corporation shall include without limitation, situations where such person is serving at the request of the corporation as a director, officer, employee, trustee or agent of another corporation, partnership, joint venture, trust or other enterprise.

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

## ARTICLE XII. NOTICES

**Section 12.1 NOTICE TO STOCKHOLDERS.** Unless the Certificate of Incorporation requires otherwise, whenever, under any provisions of these Bylaws, notice is required to be given to any stockholder, it shall be given in writing, timely and duly deposited in the United States mail, postage prepaid, and addressed to such stockholder’s last known post office address as shown by the stock record of the corporation or its transfer agent. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in accordance with applicable law.

**Section 12.2 NOTICE TO DIRECTORS.** Any notice required to be given to any director may be given by the method stated in Section 12.1, or by facsimile, telex or telegram, except that such notice other than one which is delivered personally shall be sent to such address as such director shall have filed in writing with the Secretary, or, in the absence of such filing, to the last known post office address of such director. It shall not be necessary that the same method of giving notice be employed in respect of all directors, but one permissible method may be employed in respect of any one or more, and any other permissible method or methods may be employed in respect of any other or others.

**Section 12.3 ADDRESS UNKNOWN.** If no address of a stockholder or director be known, notice may be sent to the principal executive officer of the corporation.

**Section 12.4 AFFIDAVIT OF MAILING.** An affidavit of mailing, executed by a duly authorized and competent employee of the corporation or its transfer agent appointed with respect to the class of stock affected, specifying the name and address or the names and addresses of the stockholder or stockholders, or director or directors, to whom any such notice or notices was or were given, and the time and method of giving the same, shall be conclusive evidence of the statements therein contained.

**Section 12.5 TIME NOTICES DEEMED GIVEN.** All notices given by mail, as above provided, shall be deemed to have been given as at the time of mailing, and all notices given by facsimile,

telex or telegram shall be deemed to have been given as of the sending time recorded at the time of transmission.

**Section 12.6 FAILURE TO RECEIVE NOTICE.** The period or limitation of time within which any stockholder may exercise any option or right, or enjoy any privilege or benefit, or be required to act, or within which any director may exercise any power or right, or enjoy any privilege, pursuant to any notice sent such person in the manner above provided, shall not be affected or extended in any manner by the failure of such stockholder or such director to receive such notice.

**Section 12.7 NOTICE TO PERSON WITH WHOM COMMUNICATION IS UNLAWFUL.** Whenever notice is required to be given, under any provision of law or of the Certificate of Incorporation or Bylaws of the corporation, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting which shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

**Section 12.8 NOTICE TO PERSON WITH UNDELIVERABLE ADDRESS.** Whenever notice is required to be given, under any provision of law or the Certificate of Incorporation or Bylaws of the corporation, to any stockholder to whom (i) notice of two consecutive annual meetings, and all notices of meetings to such person during the period between such two consecutive annual meetings, or (ii) all, and at least two, payments (if sent by first class mail) of dividends or interest on securities during a twelve-month period, have been mailed addressed to such person at such person's address as shown on the records of the corporation and have been returned undeliverable, the giving of such notice to such person shall not be required. Any action or meeting which shall be taken or held without notice to such person shall have the same force and effect as if such notice had been duly given. If any such person shall deliver to the corporation a written notice setting forth such person's then current address, the requirement that notice be given to such person shall be reinstated. In the event that the action taken by the corporation is such as to require the filing of a certificate under any provision of the Delaware General Corporation Law, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to this paragraph.

#### ARTICLE XIII - AMENDMENTS

**Section 13.1 AMENDMENTS.** Except as otherwise set forth in Section 11.9 of these Bylaws, these Bylaws may be amended or repealed and new Bylaws adopted by the Board of Directors or by the stockholders entitled to vote. These Bylaws amend and restate in their entirety, all previous Bylaws of the corporation, including those certain Amended and Restated Bylaws.

**Section 13.2 APPLICATION OF BYLAWS.** In the event that any provisions of these Bylaws is or may be in conflict with any law of the United States, of the state of incorporation of the corporation or of any other governmental body or power having jurisdiction over this corporation, or over the subject matter to which such provision of these Bylaws applies, or may apply, such provision of these Bylaws shall be inoperative to the extent only that the operation thereof unavoidably conflicts with such law, and shall in all other respects be in full force and effect.

#### ARTICLE XIV - LOANS TO OFFICERS

The corporation may lend money to, or guarantee any obligation of, or otherwise assist any officer or other employee of the corporation or of its subsidiaries, including any officer or employee who is a director of the corporation or its subsidiaries, whenever, in the judgment of the Board of Directors, such loan, guarantee or assistance may reasonably be expected to benefit the corporation. The loan, guarantee or other assistance may be with or without interest and may be unsecured, or secured in such manner as the Board of Directors shall approve, including, without limitation, a pledge of shares of stock

of the corporation. Nothing in this Bylaw shall be deemed to deny, limit or restrict the powers of guaranty or warranty of the corporation at common law or under statute.

**ARTICLE XV - ANNUAL REPORT**

At such time as the corporation becomes subject to the reporting requirements of Rules 12(b) and 15(d) of the Securities Exchange Act of 1934, the Board of Directors shall cause an annual report to be sent to each stockholder of the corporation not later than one hundred twenty (120) days after the close of the corporation's fiscal year. Such report shall include a balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year, accompanied by any report thereon of independent accounts or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation. Such report shall be sent to stockholders at least fifteen (15) days prior to the next annual meeting of stockholders after the end of the fiscal year to which it relates. If and so long as there are fewer than 100 holders of record of the corporation's shares, the requirement of sending of an annual report to the stockholders of the corporation is hereby expressly waived.

End of Document

For more information, please contact:  
 Bill Davis, Perficient, 314-529-3555  
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**PERFICIENT REPORTS SECOND QUARTER 2023 RESULTS**

~ CEO Jeff Davis to Transition to Executive Chairman on October 1, 2023 ~

~ President and COO Tom Hogan Appointed Chief Executive Officer and Joins Board, Each Effective October 1, 2023 ~

**ST. LOUIS** (July 27, 2023) - **Perficient, Inc.** (Nasdaq: PRFT) ("Perficient"), the leading global digital consultancy transforming the world's largest enterprises and biggest brands, today reported its financial results for the quarter ended June 30, 2023.

**Financial Highlights**

For the quarter ended June 30, 2023:

- Revenues increased 4% to \$231.1 million from \$222.7 million in the second quarter of 2022;
- Net income remained strong at \$26.4 million, but decreased from \$27.8 million in the second quarter of 2022;
- GAAP earnings per share results on a fully diluted basis decreased 5% to \$0.73 from \$0.77 in the second quarter of 2022;
- Adjusted earnings per share results (a non-GAAP measure; see attached schedule, which reconciles to GAAP earnings per share) on a fully diluted basis decreased 6% to \$1.00 from \$1.06 in the second quarter of 2022; and
- Adjusted EBITDA (a non-GAAP measure; see attached schedule, which reconciles to GAAP net income) decreased 6% to \$48.2 million from \$51.2 million in the second quarter of 2022.

"While enterprises are proceeding cautiously amidst conflicting macroeconomic signals, Perficient's integrated delivery model that blends great global talent and depth in North America, Latin America and India continues to appeal to the world's leading companies and biggest brands," said Jeffrey Davis, chairman and CEO. "In the second half of the year, we're focused on continuing to deliver best-of-breed margins."

**Other Highlights**

Among other recent achievements, Perficient:

- Announced that effective October 1, 2023, Mr. Davis will transition from CEO to Executive Chairman, and Thomas J. Hogan, Perficient's President and COO, will succeed Mr. Davis as CEO. Mr. Hogan will continue to serve as President, a role he has served in since February 2021. Mr. Hogan joined Perficient in 2008 and began serving as COO in 2018. The Perficient Board of Directors (the "Board") also approved an increase in the size of the Board and appointed Mr. Hogan to fill the newly-created vacancy, effective as of October 1, 2023;
- Has added Jill A. Jones, former executive vice president at Brown-Forman Corp. (NYSE: BFA and BFB), to its Board of Directors upon her election at the 2023 annual meeting of Perficient's stockholders;
- Launched the Perficient Cultural Connections Employee Resource Group (ERG), a global community of colleagues focused on exploring, understanding, and advancing the cultural differences that help shape Perficient's global workforce;
- Was named a 2023 Top Workplace USA, recognizing Perficient's collaborative and people-centric work culture. Perficient ranks 12th on the national list, ranking higher than all other listed large digital consultancies;
- Received the 2023 Sitecore Partner Award for Excellence in Business Impact, honoring Perficient's outstanding performance in delivering quality solutions using the Sitecore platform that transform business outcomes;
- Was recognized with Sunbelt Rentals as the 2023 Adobe Experience Maker Engager Award winner for exceptional achievement in transforming pipeline creation to drive measurable business growth;
- Was recognized as a 2023 Microsoft U.S. Partner of the Year finalist for having a track record of building new cloud-native apps and providing outstanding solutions and services in Cloud Native App Development;
- For the fourth year in a row, was recognized in Modern Healthcare's annual survey as one of the 10 largest healthcare management consulting firms; and
- Was included in Forrester's "Commerce Services Landscape, Q3, 2023" report as a medium-sized consultancy helping companies craft end-to-end commerce strategies and operate total commerce experiences.

**Business Outlook**

The following statements are based on current expectations. These statements are forward-looking and actual results may differ materially. See “Safe Harbor Statement” below.

Perficient expects its third quarter 2023 revenue to be in the range of \$220 million to \$226 million. Third quarter GAAP earnings per share is expected to be in the range of \$0.56 to \$0.60. Third quarter adjusted earnings per share (a non-GAAP measure; see attached schedule which reconciles to GAAP earnings per share guidance) is expected to be in the range of \$0.89 to \$0.94.

Perficient reduced its full year 2023 revenue guidance to a range of \$900 million to \$916 million from a range of \$945 million to \$985 million, reduced its 2023 GAAP earnings per share guidance to a range of \$2.73 to \$2.84 from a range of \$3.24 to \$3.40 and reduced its 2023 adjusted earnings per share (a non-GAAP measure; see attached schedule which reconciles to GAAP earnings per share guidance) guidance to a range of \$3.93 to \$4.05 from a range of \$4.60 to \$4.75.

**Conference Call Details**

Perficient will host a conference call regarding second quarter financial results today, July 27, 2023, at 11 a.m. Eastern.

Analysts and investors who wish to ask questions during the Q&A session can register for the call on <https://register.vevent.com/register/B1ec555ee83c9a4f5c94ff854133b408f2>. Registrants will receive confirmation with dial-in details.

A live webcast of the event can be accessed on <https://perficient.gcs-web.com/events/event-details/q2-2023-perficient-earnings-conference-call>. A replay of the webcast will be available on <https://perficient.gcs-web.com/> starting approximately two hours after the event and will be archived on the site for one year.

**About Perficient**

Perficient is the leading global digital consultancy. We imagine, create, engineer, and run digital transformation solutions that help our clients exceed customers’ expectations, outpace competition, and grow their business. With unparalleled strategy, creative, and technology capabilities, we bring big thinking and innovative ideas, along with a practical approach to help the world’s largest enterprises and biggest brands succeed. Traded on the Nasdaq Global Select Market, Perficient is a member of the Russell 2000 index and the S&P SmallCap 600 index. For more information, visit [www.perficient.com](http://www.perficient.com).

**Safe Harbor Statement**

Some of the statements contained in this news release that are not purely historical statements discuss future expectations or state other forward-looking information related to financial results and business outlook for 2023. Those statements are subject to known and unknown risks, uncertainties, and other factors that could cause the actual results to differ materially from those contemplated by the statements. The forward-looking information is based on management's current intent, belief, expectations, estimates, and projections regarding our company and our industry. You should be aware that those statements only reflect our predictions. Actual events or results may differ substantially. Important factors that could cause our actual results to be materially different from the forward-looking statements include (but are not limited to) those disclosed under the heading "Risk Factors" in our most recently filed annual report on Form 10-K and other securities filings, and the following:

- (1) the possibility that our actual results do not meet the projections and guidance contained in this news release;
- (2) the impact of the general economy and economic and political uncertainty on our business;
- (3) risks associated with potential changes to federal, state, local and foreign laws, regulations, and policies;
- (4) risks associated with the operation of our business generally, including:
  - a. client demand for our services and solutions;
  - b. effectively competing in a highly competitive market;
  - c. risks from international operations including fluctuations in exchange rates;
  - d. adapting to changes in technologies and offerings;
  - e. the ongoing transition of our executive leadership team;
  - f. obtaining favorable pricing to reflect services provided;
  - g. risk of loss of one or more significant software vendors;
  - h. maintaining a balance of our supply of skills and resources with client demand;
  - i. changes to immigration policies;
  - j. protecting our clients' and our data and information;
  - k. changes to tax levels, audits, investigations, tax laws or their interpretation;
  - l. making appropriate estimates and assumptions in connection with preparing our consolidated financial statements; and
  - m. maintaining effective internal controls;
- (5) risks associated with managing growth organically and through acquisitions;
- (6) risks associated with servicing our debt, the potential impact on the value of our common stock from the conditional conversion features of our debt and the associated convertible note hedge transactions;
- (7) legal liabilities, including intellectual property protection and infringement or the disclosure of personally identifiable information; and
- (8) the risks detailed from time to time within our filings with the Securities and Exchange Commission.

Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. This cautionary statement is provided pursuant to Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The forward-looking statements in this release are made only as of the date hereof and we undertake no obligation to update publicly any forward-looking statement for any reason, even if new information becomes available or other events occur in the future.

**Perficient, Inc.**  
**Unaudited Consolidated Statements of Operations**  
(in thousands, except per share information)

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
<b>Revenues</b>				
Services excluding reimbursable expenses	\$ 228,573	\$ 219,835	\$ 456,957	\$ 439,310
Reimbursable expenses	2,127	2,428	4,596	4,387
<b>Total services</b>	<b>230,700</b>	<b>222,263</b>	<b>461,553</b>	<b>443,697</b>
Software and hardware	405	475	960	1,152
<b>Total revenues</b>	<b>231,105</b>	<b>222,738</b>	<b>462,513</b>	<b>444,849</b>
<b>Cost of revenues (exclusive of depreciation and amortization, shown separately below)</b>				
Cost of services	143,560	134,356	285,248	270,446
Stock compensation	2,608	2,406	5,132	4,834
<b>Total cost of revenues</b>	<b>146,168</b>	<b>136,762</b>	<b>290,380</b>	<b>275,280</b>
Selling, general and administrative	39,390	37,150	78,994	75,926
Stock compensation	4,787	3,710	9,103	7,185
<b>Total selling, general and administrative</b>	<b>44,177</b>	<b>40,860</b>	<b>88,097</b>	<b>83,111</b>
Depreciation	2,224	2,005	4,529	3,878
Amortization	5,523	5,998	11,340	11,977
Acquisition costs	(71)	61	8	360
Adjustment to fair value of contingent consideration	(2,701)	(2,487)	(4,727)	(3,466)
<b>Income from operations</b>	<b>35,785</b>	<b>39,539</b>	<b>72,886</b>	<b>73,709</b>
Net interest expense	296	805	801	1,692
Net other expense	387	153	462	386
<b>Income before income taxes</b>	<b>35,102</b>	<b>38,581</b>	<b>71,623</b>	<b>71,631</b>
Provision for income taxes	8,740	10,799	18,461	16,713
<b>Net income</b>	<b>\$ 26,362</b>	<b>\$ 27,782</b>	<b>\$ 53,162</b>	<b>\$ 54,918</b>
Basic net income per share	\$ 0.78	\$ 0.82	\$ 1.57	\$ 1.62
Diluted net income per share	\$ 0.73	\$ 0.77	\$ 1.48	\$ 1.52
Shares used in computing basic net income per share	33,988	33,914	33,951	33,879
Shares used in computing diluted net income per share	36,717	36,785	36,707	36,812
Net income used in computing diluted net income per share	\$ 26,935	\$ 28,332	\$ 54,295	\$ 56,088



**Perficient, Inc.**  
**Condensed Consolidated Balance Sheets**  
(in thousands)

	<u>June 30, 2023 (unaudited)</u>	<u>December 31, 2022</u>
<b>Assets</b>		
<b>Current assets:</b>		
Cash and cash equivalents	\$ 60,471	\$ 30,130
Accounts receivable, net	186,124	202,298
Prepaid expenses	6,383	6,432
Other current assets	15,652	16,756
<b>Total current assets</b>	<b>268,630</b>	<b>255,616</b>
Property and equipment, net	15,298	17,970
Operating lease right-of-use assets	25,606	27,088
Goodwill	575,173	565,161
Intangible assets, net	79,391	88,937
Other non-current assets	49,594	41,116
<b>Total assets</b>	<b>\$ 1,013,692</b>	<b>\$ 995,888</b>
<b>Liabilities and Stockholders' Equity</b>		
<b>Current liabilities:</b>		
Accounts payable	\$ 16,220	\$ 24,351
Other current liabilities	62,071	104,780
<b>Total current liabilities</b>	<b>78,291</b>	<b>129,131</b>
Long-term debt, net	395,731	394,587
Operating lease liabilities	19,964	18,528
Other non-current liabilities	45,015	43,515
<b>Total liabilities</b>	<b>\$ 539,001</b>	<b>\$ 585,761</b>
<b>Stockholders' equity:</b>		
Preferred stock	\$ —	\$ —
Common stock	53	53
Additional paid-in capital	418,123	403,866
Accumulated other comprehensive loss	(10,142)	(17,519)
Treasury stock	(364,768)	(354,536)
Retained earnings	431,425	378,263
<b>Total stockholders' equity</b>	<b>474,691</b>	<b>410,127</b>
<b>Total liabilities and stockholders' equity</b>	<b>\$ 1,013,692</b>	<b>\$ 995,888</b>

**Perficient, Inc.**  
**Unaudited Condensed Consolidated Statements of Cash Flow**  
(in thousands)

	<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>
Net income	\$ 53,162	\$ 54,918
Adjustments to reconcile net income to net cash provided by operations	18,662	24,901
Changes in operating assets and liabilities, net of business acquisitions	(6,713)	(45,839)
<b>Net cash provided by operating activities</b>	<b>65,111</b>	<b>33,980</b>
<b>Net cash used in investing activities</b>	<b>(3,553)</b>	<b>(6,728)</b>
<b>Net cash used in financing activities</b>	<b>(31,830)</b>	<b>(12,250)</b>
Effect of exchange rate on cash and cash equivalents	613	(544)
Change in cash and cash equivalents	30,341	14,458
Cash and cash equivalents at beginning of period	30,130	24,410
Cash and cash equivalents at end of period	<u>\$ 60,471</u>	<u>\$ 38,868</u>

*See the Company's Form 10-Q for the full consolidated statements of cash flows.*

**About Non-GAAP Financial Information**

This news release includes non-GAAP financial measures. For a description of these non-GAAP financial measures, including the reasons management uses each measure, and reconciliations of these non-GAAP financial measures to the most directly comparable financial measures prepared in accordance with Generally Accepted Accounting Principles ("GAAP"), please see the section entitled "About Non-GAAP Financial Measures" and the accompanying tables entitled "Reconciliation of GAAP to Non-GAAP Measures."

**About Non-GAAP Financial Measures**

Perficient provides non-GAAP financial measures for adjusted EBITDA (earnings before interest, income taxes, depreciation, amortization, stock compensation, loss on extinguishment of debt, acquisition costs, adjustment to fair value of contingent consideration and other acquisition adjustments), adjusted net income, and adjusted earnings per share data as supplemental information regarding Perficient's business performance. Perficient believes that these non-GAAP financial measures are useful to investors because they provide investors with a better understanding of Perficient's past financial performance and future results. Perficient's management uses these non-GAAP financial measures when it internally evaluates the performance of Perficient's business and makes operating decisions, including internal operating budgeting, performance measurement, and the calculation of bonuses and discretionary compensation. Management excludes stock-based compensation related to restricted stock awards, the amortization of intangible assets, amortization of debt issuance costs related to convertible senior notes, loss on extinguishment of debt, acquisition costs, adjustments to the fair value of contingent consideration, other acquisition adjustments, net other income and expense, the impact of other infrequent or unusual transactions, and income tax effects of the foregoing, when making operational decisions.

Perficient believes that providing the non-GAAP financial measures to its investors is useful because it allows investors to evaluate Perficient's performance using the same methodology and information used by Perficient's management. Specifically, adjusted net income is used by management primarily to review business performance and determine performance-based incentive compensation for executives and other employees. Management uses adjusted EBITDA to measure operating profitability, evaluate trends, and make strategic business decisions.

Non-GAAP financial measures are subject to inherent limitations because they do not include all of the expenses included under GAAP and because they involve the exercise of discretionary judgment as to which charges are excluded from the non-GAAP financial measure. However, Perficient's management compensates for these limitations by providing the relevant disclosure of the items excluded in the calculation of adjusted EBITDA, adjusted net income, and adjusted earnings per share. In addition, some items that are excluded from adjusted net income and adjusted earnings per share can have a material impact on cash. Management compensates for these limitations by evaluating the non-GAAP measure together with the most directly comparable GAAP measure. Perficient has historically provided non-GAAP financial measures to the investment community as a supplement to its GAAP results to enable investors to evaluate Perficient's business performance in the way that management does. Perficient's definition may be different from similar non-GAAP financial measures used by other companies and/or analysts.

The non-GAAP adjustments, and the basis for excluding them, are outlined below:

***Amortization***

Perficient has incurred expense on amortization of intangible assets primarily related to various acquisitions. Management excludes these items for the purposes of calculating adjusted EBITDA, adjusted net income, and adjusted earnings per share. Perficient believes that eliminating this expense from its non-GAAP financial measures is useful to investors because the amortization of intangible assets can be inconsistent in amount and frequency, and is significantly impacted by the timing and magnitude of Perficient's acquisition transactions, which also vary substantially in frequency from period to period.

***Acquisition Costs***

Perficient incurs transaction costs related to merger and acquisition-related activities which are expensed in its GAAP financial statements. Management excludes these items for the purposes of calculating adjusted EBITDA, adjusted net income, and adjusted earnings per share. Perficient believes that excluding these expenses from its non-GAAP financial measures is useful to investors because these are expenses associated with each transaction and are inconsistent in amount and frequency causing comparison of current and historical financial results to be difficult.

***Adjustment to Fair Value of Contingent Consideration***

Perficient is required to remeasure its contingent consideration liability related to acquisitions each reporting period until the contingency is settled. Any changes in fair value are recognized in earnings. Management excludes these items for the purposes of calculating adjusted EBITDA, adjusted net income, and adjusted earnings per share. Perficient believes that excluding these

adjustments from its non-GAAP financial measures is useful to investors because they are related to acquisitions and are inconsistent in amount and frequency from period to period.

*Amortization of Debt Issuance Costs*

On November 9, 2021, Perficient issued \$380.0 million aggregate principal amount of 0.125% Convertible Senior Notes due 2026, and on August 14, 2020, Perficient issued \$230.0 million aggregate principal amount of 1.250% Convertible Senior Notes due 2025 (the “2026 Notes,” and “2025 Notes,” respectively, and collectively, the “Notes”) in private placements to qualified institutional purchasers. Issuance costs attributable to the Notes, in addition to issuance costs related to Perficient’s credit agreement, are being amortized to interest expense over their respective terms. Perficient believes that excluding these non-cash expenses from its non-GAAP financial measures is useful to investors because the expenses are not reflective of Perficient’s business performance.

*Foreign Exchange Loss (Gain)*

Non-operating foreign currency exchange gains and losses, inclusive of gains and losses on related foreign exchange forward contracts not designated as hedging instruments for accounting purposes, are reported in net other expense (income) in our consolidated statements of operations. As our operations expand into countries outside of the United States, foreign exchange gains and losses have and will become increasingly material. Perficient believes that excluding these gains and losses from its non-GAAP financial measures is useful to investors because foreign exchange gains and losses will vary as the underlying currencies fluctuate, which makes it difficult to compare current and historical results.

*Stock Compensation*

Perficient incurs stock-based compensation expense under Financial Accounting Standards Board Accounting Standards Codification Topic 718, *Compensation - Stock Compensation*. Perficient excludes stock-based compensation expense and the related tax effects for the purposes of calculating adjusted EBITDA, adjusted net income, and adjusted earnings per share because stock-based compensation is a non-cash expense, which Perficient believes is not reflective of its business performance. The nature of stock-based compensation expense also makes it very difficult to estimate prospectively, since the expense will vary with changes in the stock price and market conditions at the time of new grants, varying valuation methodologies, subjective assumptions, and different award types, making the comparison of current results with forward-looking guidance potentially difficult for investors to interpret. The tax effects of stock-based compensation expense may also vary significantly from period to period, without any change in underlying operational performance, thereby obscuring the underlying profitability of operations relative to prior periods. Perficient believes that non-GAAP measures of profitability, which exclude stock-based compensation, are widely used by analysts and investors.

*Dilution Offset from Convertible Note Hedge Transactions*

It is Perficient’s current intent to settle conversions of the Notes through combination settlement, which involves repayment of the principal portion in cash and any excess of the conversion value over the principal amount in shares of our common stock. Perficient excludes the shares that are issuable upon conversions of the Notes because Perficient expects that the dilution from such shares will be offset by the convertible note hedge transactions entered into in November 2021 and August 2020 in connection with the issuance of the Notes.

**Perficient, Inc.**  
**Reconciliation of GAAP to Non-GAAP Measures**  
**(unaudited)**  
**(in thousands, except per share data)**

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
GAAP Net Income	\$ 26,362	\$ 27,782	\$ 53,162	\$ 54,918
Adjustments:				
Provision for income taxes	8,740	10,799	18,461	16,713
Amortization	5,523	5,998	11,340	11,977
Acquisition costs	(71)	61	8	360
Adjustment to fair value of contingent consideration	(2,701)	(2,487)	(4,727)	(3,466)
Amortization of debt issuance costs	631	608	1,239	1,215
Foreign exchange loss	382	158	471	373
Stock compensation	7,395	6,116	14,235	12,019
Adjusted Net Income Before Tax	46,261	49,035	94,189	94,109
Adjusted income tax (1)	11,843	12,700	24,207	24,186
Adjusted Net Income	\$ 34,418	\$ 36,335	\$ 69,982	\$ 69,923
GAAP Earnings Per Share (diluted)	\$ 0.73	\$ 0.77	\$ 1.48	\$ 1.52
Adjusted Earnings Per Share (diluted)	\$ 1.00	\$ 1.06	\$ 2.04	\$ 2.03
Shares used in computing GAAP Earnings Per Share (diluted)	36,717	36,785	36,707	36,812
Dilution offset from convertible note hedge transactions	(2,430)	(2,431)	(2,430)	(2,431)
Shares used in computing Adjusted Earnings Per Share (diluted)	34,287	34,354	34,277	34,381
Net income used in computing GAAP Earnings Per Share (diluted)	\$ 26,935	\$ 28,332	\$ 54,295	\$ 56,088

(1) The estimated adjusted effective tax rate of 25.6% and 25.9% for the three months ended June 30, 2023 and 2022, respectively, and 25.7% for both the six months ended June 30, 2023 and 2022, has been used to calculate the provision for income taxes for non-GAAP purposes.

**Perficient, Inc.**  
**Reconciliation of GAAP to Non-GAAP Measures**  
**(unaudited)**  
**(in thousands)**

	<b>Three Months Ended June 30,</b>		<b>Six Months Ended June 30,</b>	
	<b>2023</b>	<b>2022</b>	<b>2023</b>	<b>2022</b>
GAAP Net Income	\$ 26,362	\$ 27,782	\$ 53,162	\$ 54,918
Adjustments:				
Provision for income taxes	8,740	10,799	18,461	16,713
Net interest expense	296	805	801	1,692
Net other expense	387	153	462	386
Depreciation	2,224	2,005	4,529	3,878
Amortization	5,523	5,998	11,340	11,977
Acquisition costs	(71)	61	8	360
Adjustment to fair value of contingent consideration	(2,701)	(2,487)	(4,727)	(3,466)
Stock compensation	7,395	6,116	14,235	12,019
Adjusted EBITDA (1)	<u>\$ 48,155</u>	<u>\$ 51,232</u>	<u>\$ 98,271</u>	<u>\$ 98,477</u>

(1) Adjusted EBITDA is a non-GAAP performance measure and is not intended to be a performance measure that should be regarded as an alternative to or more meaningful than either GAAP operating income or GAAP net income. Adjusted EBITDA measures presented may not be comparable to similarly titled measures presented by other companies.

**Perficient, Inc.**  
**Reconciliation of GAAP to Non-GAAP Measures**  
**(unaudited)**

	Q3 2023		Full Year 2023	
	Low end of adjusted goal	High end of adjusted goal	Low end of adjusted goal	High end of adjusted goal
GAAP EPS	\$ 0.56	\$ 0.60	\$ 2.73	\$ 2.84
Non-GAAP adjustment (1):				
Non-GAAP reconciling items	0.44	0.44	1.57	1.57
Tax effect of reconciling items	(0.11)	(0.10)	(0.37)	(0.36)
Adjusted EPS	<u>\$ 0.89</u>	<u>\$ 0.94</u>	<u>\$ 3.93</u>	<u>\$ 4.05</u>

(1) Non-GAAP adjustment represents the impact of amortization expense, stock compensation, amortization of debt issuance costs, foreign exchange gains and losses, acquisition costs and adjustments to fair value of contingent consideration, net of the tax effect of these adjustments, divided by adjusted fully diluted shares. Perficient currently expects its Q3 2023 and full year 2023 GAAP effective income tax rate to be approximately 30% and 27%, respectively. Perficient currently expects its Q3 2023 and full year 2023 estimated adjusted effective income tax rate to be approximately 29% and 27%, respectively. Perficient's estimates of GAAP and adjusted fully diluted shares for 2023 are included in the following table. These estimates could be affected by share repurchases, shares issued in conjunction with future acquisitions, changes in share price and the potential impact from the conditional conversion features of our debt.

(in millions)	Q3 2023	Full Year 2023
GAAP Fully Diluted Shares	36.9	36.8
Non-GAAP adjustment (2):		
Dilution offset from convertible note hedge transactions	(2.4)	(2.4)
Adjusted Fully Diluted Shares	<u>34.5</u>	<u>34.4</u>

(2) Non-GAAP adjustment represents the exclusion of shares that are issuable upon conversion of our convertible notes due to the expectation that shares relating to the principal amount of our convertible notes will be paid in cash and any excess will be offset by the convertible note hedge transactions entered into in August 2020 and November 2021.

Q2 2023

# Financial Results

July 27, 2023







## Safe Harbor Statement

Some of the statements contained in this presentation that are not purely historical statements, including our GAAP EPS guidance and Adjusted EPS guidance, as well as our effective income tax rate and GAAP and adjusted fully diluted shares for 2023, discuss future expectations or state other forward-looking information related to financial results and business outlook for 2023. Those statements are subject to known and unknown risks, uncertainties and other factors that could cause the actual results to differ materially from those contemplated by the statements. The "forward-looking" information is based on management's current intent, belief, expectations, estimates, and projections regarding our company and our industry. You should be aware that those statements only reflect our predictions. Actual events or results may differ substantially. Important factors that could cause our actual results to be materially different from the forward-looking statements are disclosed under the heading "Risk Factors" in our most recently filed annual report on Form 10-K. Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance, or achievements. This cautionary statement is provided pursuant to Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended. The forward-looking statements in this presentation are made only as of the date hereof and we undertake no obligation to update publicly any forward-looking statement for any reason, even if new information becomes available or other events occur in the future.



# Reconciliation of Adjusted GAAP Measures

The following table provides a reconciliation of Perficient, Inc. GAAP EPS guidance to Adjusted EPS guidance:

	Q3 2023		Full Year 2023	
	Low end of adjusted goal	High end of adjusted goal	Low end of adjusted goal	High end of adjusted goal
GAAP EPS	\$ 0.56	\$ 0.60	\$ 2.73	\$ 2.84
Non-GAAP adjustment (1):				
Non-GAAP reconciling items	0.44	0.44	1.57	1.57
Tax effect of reconciling items	(0.11)	(0.10)	(0.37)	(0.36)
Adjusted EPS	\$ 0.89	\$ 0.94	\$ 3.93	\$ 4.05

(1) Non-GAAP adjustment represents the impact of amortization expense, stock compensation, amortization of debt issuance costs, foreign exchange gains and losses, acquisition costs and adjustments to fair value of contingent consideration, net of the tax effect of these adjustments, divided by adjusted fully diluted shares. Perficient currently expects its Q3 2023 and full year 2023 GAAP effective income tax rate to be approximately 30% and 27%, respectively. Perficient currently expects its Q3 2023 and full year 2023 estimated adjusted effective income tax rate to be approximately 29% and 27%, respectively. Perficient's estimates of GAAP and adjusted fully diluted shares for 2023 are included in the following table. These estimates could be affected by share repurchases, shares issued in conjunction with future acquisitions, changes in share price and the potential impact from the conditional conversion features of our debt.

(in millions)	Q3 2023	Full Year 2023
GAAP fully diluted shares	36.9	36.8
Non-GAAP adjustment (2):		
Dilution offset from convertible note hedge transactions	(2.4)	(2.4)
Adjusted fully diluted shares	34.5	34.4

(2) Non-GAAP adjustment represents the exclusion of shares that are issuable upon conversion of our convertible notes due to the expectation that shares relating to the principal amount of our convertible notes will be paid in cash and any excess will be offset by the convertible note hedge transactions entered into in August 2020 and November 2021.

Note further discussion and reconciliation of Perficient, Inc. non-GAAP financial measures can be found in our earnings press release and Form 8-K furnished July 27, 2023.

# Financial Metrics

(in thousands, except per share data)	THREE MONTHS ENDED JUNE 30,			SIX MONTHS ENDED JUNE 30,		
	2023	2022	% Change	2023	2022	% Change
Revenues	\$ 231,105	\$ 222,738	4 %	\$ 462,513	\$ 444,849	4 %
Services Revenues (excluding reimbursable expenses)	\$ 228,573	\$ 219,835	4 %	\$ 456,957	\$ 439,310	4 %
Cost of Services (excluding reimbursable expenses and stock compensation)*	\$ 141,433	\$ 131,928	7 %	\$ 280,652	\$ 266,059	5 %
Services Revenues Net of Cost	\$ 87,140	\$ 87,907	(1) %	\$ 176,305	\$ 173,251	2 %
% of Services Revenues	38.1 %	40.0 %		38.6 %	39.4 %	
Adjusted EBITDA**	\$ 48,155	\$ 51,232	(6) %	\$ 98,271	\$ 98,477	- %
% of Services Revenues	21.1 %	23.3 %		21.5 %	22.4 %	
Adjusted Net Income**	\$ 34,418	\$ 36,335	(5) %	\$ 69,982	\$ 69,923	- %
% of Services Revenues	15.1 %	16.5 %		15.3 %	15.9 %	
GAAP EPS	\$ 0.73	\$ 0.77	(5) %	\$ 1.48	\$ 1.52	(3) %
Amortization	0.16	0.18		0.33	0.35	
Stock Compensation	0.22	0.18		0.42	0.35	
Debt Related Adjustments***	0.05	0.06		0.11	0.11	
Foreign Exchange Loss and Other	0.01	-		0.01	0.01	
Acquisition Costs / Earnout Adjustments	(0.08)	(0.07)		(0.14)	(0.09)	
Tax Effect of Above Reconciling Items	(0.09)	(0.06)		(0.17)	(0.22)	
Adjusted EPS**	\$ 1.00	\$ 1.06	(6) %	\$ 2.04	\$ 2.03	- %

\* Cost of Services excludes depreciation and amortization.

\*\* Note further discussion and reconciliation of Perficient, Inc. non-GAAP financial measures can be found in our earnings press release and Form 8-K furnished July 27, 2023.

\*\*\* Debt Related Adjustments includes amortization of debt issuance costs, loss on extinguishment of debt, dilution offset from convertible note hedge transactions, and an adjustment to remove the interest expense on convertible notes which was added back in the calculation of diluted GAAP EPS under the if-converted method.

## Operating Metrics

(in thousands)	Q2 2023	Q2 2022	% Change
Services Revenue (excluding reimbursable expenses)	\$ 228,573	\$ 219,835	4 %
Reimbursable Expenses	\$ 2,127	\$ 2,428	NM*
Software and Hardware Revenue	\$ 405	\$ 475	NM*

(in thousands)	Q2 2023		Q2 2022	
	Average	Ending	Average	Ending
Offshore/Nearshore Billable Employees (a)	3,555	3,573	2,907	2,962
Onshore Billable Employees (b)	2,392	2,363	2,528	2,493
Subcontractors	373	384	371	355
Total Billable Headcount	6,320	6,320	5,806	5,810
SG&A Headcount	969	989	957	937
Total Headcount	7,289	7,309	6,763	6,747

(a) Offshore/Nearshore includes all employees, excluding Onshore

(b) Onshore includes US, Canada, and the United Kingdom

\* "NM" means not meaningful.

## Industry Data

Revenue by Industry	Q2 2023	Q1 2023	Q2 2022
Financial Services/Banking/Insurance	23%	21%	19%
Healthcare/Pharma/Life Sciences	21%	21%	25%
Manufacturing	10%	10%	9%
Leisure/Media/Entertainment	8%	9%	10%
Automotive/Transportation	8%	8%	11%
Other	30%	31%	26%



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#### **Perficent Announces Leadership Succession Plan**

~ Jeff Davis to Transition To Executive Chairman on October 1, 2023 ~  
~ President and COO Tom Hogan Appointed Chief Executive Officer and Joins Board, Each Effective October 1, 2023 ~

**SAINT LOUIS** (July 27, 2023) – [Perficent, Inc.](#) (Nasdaq: PRFT) (“Perficent”), the leading global digital consultancy transforming the world’s largest enterprises and biggest brands, today announced that Chief Executive Officer (“CEO”) Jeff Davis plans to transition to Executive Chairman on October 1, 2023. Following a thoughtful succession planning process, President and COO Tom Hogan has been appointed as Perficent’s CEO and appointed to the Board, each effective as of October 1, 2023.

“Serving Perficent since 2001 has been a remarkable honor and privilege. During that time, we’ve grown from startup to global leader, created thousands of jobs, rewarded our stockholders and built a client roster comprised of the world’s leading enterprises and biggest brands,” said Davis. “Tom Hogan has delivered strong results and has been preparing for this role for several years. I’m excited he’ll lead Perficent into the future. Beyond Tom, most of our executive leaders have been in place for more than a decade, and I’m as confident as I’ve ever been in that team and Perficent’s market position and potential.”

David Lundeen, lead independent director of the Perficent board of directors, said, “On behalf of the Board, I want to thank Jeff for his extraordinary leadership and many years of service to Perficent. Jeff has led Perficent through strong, stable, and challenging market environments with a steady hand. His consistent focus, grit and determination has produced tremendous growth for everyone associated with Perficent. Like Jeff, we’re incredibly optimistic about where Perficent is headed in the years ahead. Tom is the ideal leader to power Perficent into a future of continued global growth and expansion, and the Board has absolute and complete confidence in him and the entire executive leadership team.”

“Since joining in 2008, I’ve believed in Perficent’s numerous opportunities to deliver impactful outcomes for our clients, amazing careers for our colleagues, and important differences for our communities and the world,” said CEO-elect Tom Hogan. “I’m grateful to Jeff for his many years of leadership and mentorship and to the Board for their ongoing support and guidance. I’m humbled to step into the role of CEO and lead our unique, aspirational and ambitious organization to and through many more years of global growth.”

#### **About Perficent**

Perficent is the leading global digital consultancy. We imagine, create, engineer, and run digital transformation solutions that help our clients exceed customers’ expectations, outpace competition, and grow their business. With unparalleled strategy, creative, and technology capabilities, we bring big thinking and innovative ideas, along with a practical approach to help the world’s largest enterprises and biggest brands succeed. Traded on the Nasdaq Global Select Market, Perficent is a member of the Russell 2000 index and the S&P SmallCap 600 index. For more information, visit [www.perficent.com](http://www.perficent.com).

#### **Safe Harbor Statement**

Some of the statements contained in this news release that are not purely historical statements discuss future expectations or state other forward-looking information related to financial results and business outlook for 2023. Those statements are subject to known and unknown risks, uncertainties, and other factors that could cause the actual results to differ materially from those contemplated by the statements. The forward-looking information is based on management’s current intent, belief, expectations, estimates, and projections regarding our company and our industry. You should be aware that those statements only reflect our predictions. Actual events or results may differ substantially. Important factors that could cause our actual results to be materially different from the forward-looking statements include (but are not limited to) those disclosed under the heading “Risk Factors” in our most recently filed annual report on Form 10-K and other securities filings.