

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**
Washington, DC 20549

FORM 10-Q

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

For the quarterly period ended June 30, 2024

or

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

For the transition period from _____ to _____

Commission File Number 000-51470

AtriCure, Inc.

(Exact name of Registrant as specified in its charter)

Delaware

(State or other jurisdiction of
incorporation)

34-1940305

(IRS Employer
Identification No.)

7555 Innovation Way

Mason , OH 45040

(Address of principal executive offices)

(513) 755-4100

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

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	ATRC	NASDAQ Global Market

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days: Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer or a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large Accelerated Filer Accelerated Filer Emerging growth company
Non-Accelerated Filer Smaller reporting 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:

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act): YES NO

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date.

<u>Class</u>	<u>Outstanding at July 29, 2024</u>
Common Stock, \$0.001 par value	48,697,505

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PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

ATRICURE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
 (In Thousands, Except Per Share Amounts)
 (Unaudited)

	June 30, 2024	December 31, 2023
Assets		
Current assets:		
Cash and cash equivalents	\$ 106,035	\$ 84,310
Short-term investments	7,985	52,975
Accounts receivable, less allowance for credit losses of \$ 400 and \$ 500	55,568	52,501
Inventories	73,654	67,897
Prepaid and other current assets	9,610	8,563
Total current assets	252,852	266,246
Property and equipment, net	42,175	42,435
Operating lease right-of-use assets	4,030	4,324
Intangible assets, net	60,238	63,986
Goodwill	234,781	234,781
Other noncurrent assets	3,197	2,160
Total Assets	<u><u>\$ 597,273</u></u>	<u><u>\$ 613,932</u></u>
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable	\$ 26,666	\$ 27,354
Accrued liabilities	32,018	44,682
Current lease liabilities	2,541	2,533
Total current liabilities	61,225	74,569
Long-term debt	61,865	60,593
Finance and operating lease liabilities	10,910	11,368
Other noncurrent liabilities	1,188	1,234
Total Liabilities	135,188	147,764
Commitments and contingencies (Note 9)		
Stockholders' Equity:		
Common stock, \$ 0.001 par value, 90,000 shares authorized and 48,686 and 47,526 issued and outstanding	49	48
Additional paid-in capital	840,939	824,170
Accumulated other comprehensive loss	(569)	(993)
Accumulated deficit	(378,334)	(357,057)
Total Stockholders' Equity	<u><u>462,085</u></u>	<u><u>466,168</u></u>
Total Liabilities and Stockholders' Equity	<u><u>\$ 597,273</u></u>	<u><u>\$ 613,932</u></u>

See accompanying notes to condensed consolidated financial statements.

ATRICURE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE LOSS
(In Thousands, Except Per Share Amounts)
(Unaudited)

	Three Months Ended		Six Months Ended			
	June 30,	2024	2023	June 30,	2024	
Revenue	\$ 116,269	\$ 100,918	\$ 225,120	\$ 194,412		
Cost of revenue	29,425	23,841	57,008	47,726		
Gross profit	86,844	77,077	168,112	146,686		
Operating expenses:						
Research and development expenses	20,416	17,438	40,261	32,765		
Selling, general and administrative expenses	73,596	63,783	145,936	123,847		
Total operating expenses	94,012	81,221	186,197	156,612		
Loss from operations	(7,168)	(4,144)	(18,085)	(9,926)		
Other income (expense):						
Interest expense	(1,612)	(1,719)	(3,289)	(3,355)		
Interest income	997	961	1,949	1,836		
Loss on debt extinguishment	—	—	(1,362)	—		
Other income (expense)	28	(123)	(54)	22		
Loss before income tax expense	(7,755)	(5,025)	(20,841)	(11,423)		
Income tax expense	253	93	436	171		
Net loss	\$ (8,008)	\$ (5,118)	\$ (21,277)	\$ (11,594)		
Basic and diluted net loss per share	\$ (0.17)	\$ (0.11)	\$ (0.45)	\$ (0.25)		
Weighted average shares outstanding—basic and diluted	46,909	46,266	46,814	46,187		
Comprehensive income (loss):						
Unrealized gain on investments	\$ 246	\$ 427	\$ 785	\$ 1,468		
Foreign currency translation adjustment	(118)	36	(361)	19		
Other comprehensive income	128	463	424	1,487		
Net loss	(8,008)	(5,118)	(21,277)	(11,594)		
Comprehensive loss, net of tax	\$ (7,880)	\$ (4,655)	\$ (20,853)	\$ (10,107)		

See accompanying notes to condensed consolidated financial statements.

ATRICURE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY
(In Thousands)
(Unaudited)

Three-Month Period Ended June 30, 2023						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance—March 31, 2023	47,244	\$ 47	\$ 790,965	\$ (333,095)	\$ (3,072)	\$ 454,845
Impact of equity compensation plans	108	—	12,232	—	—	12,232
Other comprehensive income	—	—	—	—	463	463
Net loss	—	—	—	(5,118)	—	(5,118)
Balance—June 30, 2023	47,352	\$ 47	\$ 803,197	\$ (338,213)	\$ (2,609)	\$ 462,422
Three-Month Period Ended June 30, 2024						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance—March 31, 2024	48,381	\$ 48	\$ 827,288	\$ (370,326)	\$ (697)	\$ 456,313
Impact of equity compensation plans	305	1	13,651	—	—	13,652
Other comprehensive income	—	—	—	—	128	128
Net loss	—	—	—	(8,008)	—	(8,008)
Balance—June 30, 2024	48,686	\$ 49	\$ 840,939	\$ (378,334)	\$ (569)	\$ 462,085
Six-Month Period Ended June 30, 2023						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance—December 31, 2022	46,563	\$ 47	\$ 787,422	\$ (326,619)	\$ (4,096)	\$ 456,754
Impact of equity compensation plans	789	—	15,775	—	—	15,775
Other comprehensive income	—	—	—	—	1,487	1,487
Net loss	—	—	—	(11,594)	—	(11,594)
Balance—June 30, 2023	47,352	\$ 47	\$ 803,197	\$ (338,213)	\$ (2,609)	\$ 462,422
Six-Month Period Ended June 30, 2024						
	Common Stock		Additional Paid-in Capital	Accumulated Deficit	Other Comprehensive Income (Loss)	Total Stockholders' Equity
	Shares	Amount				
Balance—December 31, 2023	47,526	\$ 48	\$ 824,170	\$ (357,057)	\$ (993)	\$ 466,168
Impact of equity compensation plans	1,160	1	16,769	—	—	16,770
Other comprehensive income	—	—	—	—	424	424
Net loss	—	—	—	(21,277)	—	(21,277)
Balance—June 30, 2024	48,686	\$ 49	\$ 840,939	\$ (378,334)	\$ (569)	\$ 462,085

See accompanying notes to condensed consolidated financial statements.

ATRICURE, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In Thousands)
(Unaudited)

	Six Months Ended June 30,	
	2024	2023
Cash flows from operating activities:		
Net loss	\$ (21,277)	\$ (11,594)
Adjustments to reconcile net loss to net cash provided by (used in) operating activities:		
Share-based compensation expense	19,656	17,755
Depreciation	5,231	4,567
Amortization of intangible assets	3,748	1,956
Amortization of deferred financing costs	239	243
Amortization of investments	107	294
Loss on debt extinguishment	1,362	—
Other non-cash adjustments	534	487
Changes in operating assets and liabilities:		
Accounts receivable	(3,131)	(5,563)
Inventories	(5,887)	(9,377)
Other current assets	(1,069)	(1,696)
Accounts payable	(10)	2,945
Accrued liabilities	(12,564)	(1,084)
Other noncurrent assets and liabilities	(575)	(1)
Net cash used in operating activities	<u>(13,636)</u>	<u>(1,068)</u>
Cash flows from investing activities:		
Sales and maturities of available-for-sale securities	45,668	48,315
Purchases of property and equipment	(5,158)	(5,582)
Proceeds from sale of property and equipment	25	—
Acquisition of intellectual property	<u>—</u>	<u>(30,000)</u>
Net cash provided by investing activities	<u>40,535</u>	<u>12,733</u>
Cash flows from financing activities:		
Proceeds from revolving credit facility, net of financing costs	61,210	—
Payments on debt and leases	(62,329)	(483)
Payment of financing costs and bank fees	(1,002)	(60)
Proceeds from stock option exercises	3,809	4,058
Shares repurchased for payment of taxes on stock awards	(6,696)	(6,038)
Net cash used in financing activities	<u>(5,008)</u>	<u>(2,523)</u>
Effect of exchange rate changes on cash and cash equivalents	<u>(166)</u>	<u>(1)</u>
Net increase in cash and cash equivalents	<u>21,725</u>	<u>9,141</u>
Cash and cash equivalents—beginning of period	<u>84,310</u>	<u>58,099</u>
Cash and cash equivalents—end of period	<u><u>\$ 106,035</u></u>	<u><u>\$ 67,240</u></u>
Supplemental cash flow information:		
Cash paid for interest	\$ 2,175	\$ 3,078
Net cash paid for income taxes	509	159
Non-cash investing and financing activities:		
Accrued purchases of property and equipment	845	1,046

See accompanying notes to condensed consolidated financial statements.

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands, except per share amounts)
(Unaudited)

1. DESCRIPTION OF BUSINESS AND SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Nature of the Business—The “Company” or “AtriCure” consists of AtriCure, Inc. and its wholly-owned subsidiaries. The Company is a leading innovator in surgical treatments and therapies for atrial fibrillation (Afib), left atrial appendage (LAA) management and post-operative pain management, and sells its products to medical centers globally through its direct sales force and distributors.

Basis of Presentation—The accompanying interim financial statements have been prepared in accordance with the rules and regulations of the Securities and Exchange Commission (SEC). All intercompany accounts and transactions have been eliminated in consolidation. The accompanying interim financial statements are unaudited, but in the opinion of the Company’s management, contain all normal, recurring adjustments considered necessary to present fairly the financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America (GAAP) applicable to interim periods. Certain information and footnote disclosures included in annual financial statements prepared in accordance with GAAP have been omitted or condensed. The Company believes the disclosures herein are adequate to make the information presented not misleading. Results of operations are not necessarily indicative of the results expected for the full year or for any future period.

The accompanying interim financial statements should be read in conjunction with the Company’s audited financial statements included in the Company’s Annual Report on Form 10-K for the year ended December 31, 2023 filed with the SEC. There have been no changes in the Company’s significant accounting policies for the six months ended June 30, 2024 as compared to the significant accounting policies described in the Company’s Annual Report on Form 10-K for the year ended December 31, 2023.

Use of Estimates—The preparation of the financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, including inventories, intangible assets, valuation allowance for deferred income tax assets, disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense, including share-based compensation expense. Estimates are based on historical experience, where applicable, and other reasonable assumptions. Actual results could differ from those estimates.

Segments—The Company’s chief operating decision maker is its Chief Executive Officer, who reviews financial information presented on a consolidated basis, accompanied only by revenue information by product type and geographic area, for purposes of allocating resources and evaluating financial performance. Accordingly, the Company has determined that it has a single operating segment. The Company’s long-lived assets are located in the United States, except for \$ 3,800 as of June 30, 2024 and \$ 3,432 as of December 31, 2023 located primarily in Europe.

Earnings Per Share—Basic and diluted net loss per share are computed by dividing the net loss by the weighted average number of common shares outstanding during the period. Since the Company has experienced net losses for all periods presented, net loss per share excludes the effect of 2,675 and 1,839 shares as of June 30, 2024 and 2023 because they are anti-dilutive. Therefore, the number of shares used for basic and diluted net loss per share are the same.

2. FAIR VALUE

The Financial Accounting Standards Board’s (FASB) Accounting Standards Codification (ASC) 820, “Fair Value Measurements and Disclosures” (ASC 820), defines fair value as the exchange price that would be received for an asset or paid to settle a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. The fair value hierarchy is based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value:

- Level 1—Quoted prices in active markets for identical assets or liabilities.
- Level 2—Inputs other than Level 1 that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities; quoted prices in markets that are not active; or other inputs that are observable or can be corroborated by observable market data for substantially the full term of the assets or liabilities.
- Level 3—Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands, except per share amounts)
(Uaudited)

The following table represents the Company's fair value hierarchy for its financial assets measured at fair value on a recurring basis as of June 30, 2024:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds	\$ —	\$ 85,887	\$ —	\$ 85,887
Government and agency obligations	7,985	—	—	7,985
Total assets	\$ 7,985	\$ 85,887	\$ —	\$ 93,872

There were no changes in the levels or methodology of measurement of financial assets and liabilities during the three and six months ended June 30, 2024.

The following table represents the Company's fair value hierarchy for its financial assets measured at fair value on a recurring basis as of December 31, 2023:

	Quoted Prices in Active Markets for Identical Assets (Level 1)	Significant Other Observable Inputs (Level 2)	Significant Other Unobservable Inputs (Level 3)	Total
Assets:				
Money market funds	\$ —	\$ 77,864	\$ —	\$ 77,864
Government and agency obligations	12,711	—	—	12,711
Corporate bonds	—	38,033	—	38,033
Asset-backed securities	—	2,231	—	2,231
Total assets	\$ 12,711	\$ 118,128	\$ —	\$ 130,839

Contingent Consideration. The Company's contingent consideration arrangements arising from the SentreHEART acquisition obligate the Company to pay certain defined amounts to former shareholders of SentreHEART if specified milestones are met related to the aMAZE™ IDE clinical trial, including PMA approval and reimbursement for the therapy involving SentreHEART's devices. The PMA approval milestone expired December 31, 2023, while the achievement period for the reimbursement milestone expires on December 31, 2026. The Company assessed the projected probability of payment during the contractual achievement periods to be remote, resulting in no reported fair value as of June 30, 2024 and December 31, 2023.

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands, except per share amounts)
(Uunaudited)

3. INVESTMENTS

Investments as of June 30, 2024 consisted of the following:

	Cost Basis	Unrealized Losses	Fair Value
Government and agency obligations	\$ 8,000	\$ (15)	\$ 7,985

Investments as of December 31, 2023 consisted of the following:

	Cost Basis	Unrealized Losses	Fair Value
Corporate bonds	\$ 38,514	\$ (481)	\$ 38,033
Government and agency obligations	12,998	(287)	12,711
Asset-backed securities	2,263	(32)	2,231
Total	<u>\$ 53,775</u>	<u>\$ (800)</u>	<u>\$ 52,975</u>

The gross realized gains or losses from sales of available-for-sale investments were not significant in the three and six months ended June 30, 2024 and 2023.

The cost and fair value of investments in debt securities, by contractual maturity, as of June 30, 2024 were as follows:

	Available-for-sale	
	Amortized Cost	Fair Value
Due in 1 year or less	<u>\$ 8,000</u>	<u>\$ 7,985</u>

Instruments not due at a single maturity date consist of asset-backed securities. Actual maturities may differ from the contractual maturities due to call or prepayment rights.

4. INVENTORIES

Inventories consist of the following:

	June 30, 2024	December 31, 2023
Raw materials	\$ 36,860	\$ 36,751
Work in process	4,591	3,582
Finished goods	32,203	27,564
Total	<u>\$ 73,654</u>	<u>\$ 67,897</u>

5. INTANGIBLE ASSETS

The following table provides a summary of the Company's intangible assets:

	June 30, 2024		December 31, 2023	
	Cost	Accumulated Amortization	Cost	Accumulated Amortization
Technology	\$ 46,470	\$ 11,582	\$ 46,470	\$ 10,084
Patents	30,000	4,650	30,000	2,400
Total	<u>\$ 76,470</u>	<u>\$ 16,232</u>	<u>\$ 76,470</u>	<u>\$ 12,484</u>

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands, except per share amounts)
(Unaudited)

The following table summarizes the allocation of amortization expense of intangible assets:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2024	2023	2024	2023
Cost of revenues	\$ 1,125	\$ 480	\$ 2,250	\$ 480
Research and development expenses	760	738	1,498	1,476
Total	\$ 1,885	\$ 1,218	\$ 3,748	\$ 1,956

Future amortization expense is projected as follows:

2024 (excluding the six months ended June 30, 2024)	\$ 3,771
2025	8,441
2026	9,535
2027	10,435
2028	6,535
2029 and thereafter	21,521
Total	\$ 60,238

6. ACCRUED LIABILITIES

Accrued liabilities consist of the following:

	June 30,	December 31,	
		2024	2023
Accrued compensation and employee-related expenses	\$ 27,061	\$ 39,425	
Sales returns and allowances	2,744	2,503	
Other accrued liabilities	2,213	2,754	
Total	\$ 32,018	\$ 44,682	

7. INDEBTEDNESS

On January 5, 2024, the Company entered into a credit agreement (Credit Agreement) with JPMorgan Chase Bank, N.A., as administrative agent, and JPMorgan Chase Bank, N.A., as bookrunner and lead arranger (JPMCB), and Silicon Valley Bank, a Division of First-Citizens Bank & Trust Company, as Joint Lead Arrangers and Joint Bookrunners, and the lenders party thereto (Lenders). The Credit Agreement provides for an asset based revolving credit facility (ABL Facility) in an amount of up to \$ 125,000 . Borrowing availability under the ABL Facility is based on the lesser of \$ 125,000 or a borrowing base calculation as defined by the Credit Agreement. The Company may request an increase in the revolving commitment by up to \$ 40,000 (not to exceed a total of \$ 165,000). A portion of the ABL Facility, limited to \$ 5,000 , is available for the issuance of letters of credit by JPMCB or other financial institutions. JPMCB in its sole discretion, may create swingline loans by advancing floating rate revolving loans requested. Any such swingline loans will reduce availability under the ABL Facility on a dollar-for-dollar basis.

At closing, the Company borrowed \$ 61,865 . The proceeds of the ABL Facility were used to terminate the Company's outstanding indebtedness and final fee under the Loan and Security Agreement with Silicon Valley Bank (SVB Loan Agreement). Certain prepayment and early termination fees under the SVB Loan Agreement were waived at termination. The termination of the SVB Loan Agreement was treated as a debt extinguishment and the resulting loss on debt extinguishment is \$ 1,362 . As of June 30, 2024, the Company had borrowings of \$ 61,865 and had borrowing capacity of \$ 61,885 under the ABL facility.

The Credit Agreement has a three-year term, and all outstanding borrowings are due upon maturity of the Credit Agreement on January 5, 2027. Through January 2025, the Company's required minimum utilization of the ABL facility is 40 % of the aggregate revolving commitment or \$ 50,000 . Subject to customary exceptions and restrictions, the Company may voluntarily prepay outstanding amounts under the ABL Facility at any time thereafter without premium or penalty. Any voluntary prepayments made will not reduce commitments under the ABL Facility. The Credit Agreement contains mandatory

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
 (In Thousands, except per share amounts)
 (Unaudited)

prepayment provisions which require prepayment of amounts outstanding under the ABL Facility upon specified events or Availability shortfall.

Future maturities of long-term debt are projected as follows:

2024 (excluding the six months ended June 30, 2024)	\$ —
2025	—
2026	—
2027	61,865
2028	—
Total long-term debt, of which \$ 61,865 is noncurrent	<u>\$ 61,865</u>

The ABL Facility is subject to a facility fee of 0.37 % per annum of the daily available revolving commitment and paid on a quarterly basis. Outstanding amounts under the Credit Agreement bear interest at a rate per annum equal to, at the Company's election: (i) an alternate base rate (ABR) plus an applicable margin or (ii) an adjusted term secured overnight financing rate (SOFR) plus an applicable margin. All swingline loans bear interest at a rate per annum equal to the ABR plus the applicable margin under the Credit Agreement. Alternate base rate is equal to the greater of Prime, the NYFRB Rate plus 0.50 % or Adjusted Term SOFR Rate plus 1.00 %. The applicable margin on borrowings will adjust ranging 1.50 % to 1.75 % per annum for ABR borrowings and from 2.50 % to 2.75 % per annum for SOFR term borrowings determined by the average historical excess availability. Participation and fronting fees are accrued and paid on a quarterly basis.

The ABL Facility is secured by the assets of the Company, consisting of personal, tangible or intangible property, including certain outstanding equity interests of the Company's direct subsidiaries, subject to limitations specified in the Credit Agreement. The Credit Agreement contains customary representations and warranties, events of default and financial, affirmative and negative covenants for facilities of this type, including but not limited to financial covenants relating to a fixed charge coverage ratio, a minimum liquidity requirement and a minimum excess availability requirement, and restrictions on indebtedness, liens, investments and acquisitions, asset dispositions, specified agreements, restricted payments and prepayment of certain indebtedness.

8. LEASES

The Company has operating and finance leases for office, manufacturing and warehouse facilities and automobiles. The Company's leases have remaining lease terms of less than one year to nine years. Options to renew or extend leases beyond their initial term have been excluded from measurement of the right-of-use (ROU) assets and lease liabilities as exercise is not reasonably certain.

The weighted average remaining lease term and the discount rate for the reporting periods are as follows:

	June 30, 2024	December 31, 2023
Operating Leases		
Weighted average remaining lease term (years)	4.6	4.8
Weighted average discount rate	5.99 %	5.75 %
Finance Leases		
Weighted average remaining lease term (years)	6.2	6.7
Weighted average discount rate	7.07 %	6.93 %

A letter of credit for \$ 1,250 issued to the lessor of the Company's corporate headquarters building is renewed annually and remains outstanding as of June 30, 2024.

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ATRICURE, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(In Thousands, except per share amounts)
(Unaudited)

The components of lease expense are as follows:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2024	2023	2024	2023
Operating lease cost	\$ 384	\$ 325	\$ 764	\$ 635
Finance lease cost:				
Amortization of right-of-use assets	268	255	523	510
Interest on lease liabilities	160	170	317	345
Total finance lease cost	<u><u>\$ 428</u></u>	<u><u>\$ 425</u></u>	<u><u>\$ 840</u></u>	<u><u>\$ 855</u></u>

Short-term lease expense was not significant for the three and six months ended June 30, 2024 and 2023.

Supplemental cash flow information related to leases is as follows:

	Six Months Ended		Six Months Ended	
	June 30, 2024	June 30, 2023	June 30, 2024	June 30, 2023
Cash paid for amounts included in the measurement of lease liabilities:				
Operating cash flows for operating leases	\$ 453	\$ 602		
Operating cash flows for finance leases	317	345		
Financing cash flows for finance leases	505	483		
Right-of-use assets and corresponding lease obligations related to new and modified lease agreements:				
Operating leases	322	1,068		
Finance leases	421	—		

Supplemental balance sheet information related to leases is as follows:

	June 30, 2024		December 31, 2023	
	Operating Leases	Finance Leases	Operating Leases	Finance Leases
Operating lease right-of-use assets	\$ 4,030	\$ 4,324	\$ 4,030	\$ 4,324
Current lease liabilities	1,412	1,447	1,412	1,447
Finance and operating lease liabilities	3,022	3,307	3,022	3,307
Total operating lease liabilities	<u><u>\$ 4,434</u></u>	<u><u>\$ 4,754</u></u>	<u><u>\$ 4,434</u></u>	<u><u>\$ 4,754</u></u>
Finance Leases				
Property and equipment, at cost	\$ 14,765	\$ 14,620	\$ 14,765	\$ 14,620
Accumulated depreciation	(8,352)	(8,105)	(8,352)	(8,105)
Property and equipment, net	<u><u>\$ 6,413</u></u>	<u><u>\$ 6,515</u></u>	<u><u>\$ 6,413</u></u>	<u><u>\$ 6,515</u></u>
Current lease liabilities	1,129	1,086	1,129	1,086
Finance and operating lease liabilities	7,888	8,061	7,888	8,061
Total finance lease liabilities	<u><u>\$ 9,017</u></u>	<u><u>\$ 9,147</u></u>	<u><u>\$ 9,017</u></u>	<u><u>\$ 9,147</u></u>

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Future maturities of lease liabilities as of June 30, 2024 are as follows:

	Operating Leases	Finance Leases
2024 (excluding the six months ended June 30, 2024)	\$ 1,740	\$ 860
2025	1,273	1,742
2026	940	1,774
2027	935	1,808
2028	527	1,842
2029 and thereafter	764	3,158
Total payments	\$ 6,179	\$ 11,184
Less imputed interest	(1,745)	(2,167)
Total	\$ 4,434	\$ 9,017

9. COMMITMENTS AND CONTINGENCIES

License Agreement. The Company had been a party to a license agreement that required royalty payments of 5 % of specified product sales. In May 2023, the Company entered into an agreement that terminated the license agreement and the Company's obligations to make royalty payments under the license agreement. See *Legal* section below for additional information.

Purchase Agreements. The Company enters into standard purchase agreements with suppliers in the ordinary course of business, generally with terms that allow cancellation.

Legal. The Company may, from time to time, become a party to legal proceedings. Such matters are subject to many uncertainties and to outcomes of which the financial impacts are not predictable with assurance and that may not be known for extended periods of time. A liability is established once management determines a loss is probable and an amount can be reasonably estimated. The Company recognizes income from a favorable resolution of legal proceedings when the associated cash or assets are received.

The Company received a Civil Investigative Demand (CID) from the U.S. Department of Justice (USDOJ) in December 2017 stating that it is investigating the Company to determine whether the Company has violated the False Claims Act, relating to the promotion of certain medical devices related to the treatment of atrial fibrillation for off-label use and submitted or caused to be submitted false claims to certain federal and state health care programs for medically unnecessary healthcare services related to the treatment of atrial fibrillation. The CID covers the period from January 2010 to December 2017 and required the production of documents and answers to written interrogatories. The Company had no knowledge of the investigation prior to receipt of the CID. The Company maintains rigorous policies and procedures to promote compliance with the False Claims Act and other applicable regulatory requirements. The Company provided the USDOJ with documents and answers to the written interrogatories. In March 2021, USDOJ informed the Company that its investigation was based on a lawsuit brought on behalf of the United States and various state and local governments under the *qui tam* provisions of federal and certain state and local False Claims Acts. Although the USDOJ and all of the state and local governments declined to intervene, the relator continues to pursue the case. During the third quarter of 2022, the relator filed a Fourth Amended Complaint, which dropped allegations of off-label promotion and alleges that the Company paid illegal kickbacks to healthcare providers in exchange for using or referring the Company's products, in violation of the federal Anti-Kickback Statute and various comparable state and local laws. While the Company is contesting the case, it is not possible to predict when this matter may be resolved or what impact, if any, the outcome of this matter might have on our consolidated financial position, results of operations or cash flows.

On August 23, 2022, the Cleveland Clinic Foundation ("CCF") and IDx Medical, Ltd. ("IDx") filed a Demand for Arbitration against the Company with the American Arbitration Association ("AAA"), alleging that the Company breached certain provisions of the License Agreement dated December 9, 2003 among the Company, Clinic and IDx ("License Agreement"). Clinic and IDx alleged that the Company did not include the revenues from sales of certain products in its royalty payments due under the License Agreement, and the Company did not provide related notices required under the License Agreement. The Company filed its Answering Statement and Counterclaims to the allegations in September 2022, denying each

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claim and counterclaiming for breach of contract, correction of inventorship, declaratory judgment, patent prosecution and legal fees. In May 2023, the Company entered into an Assignment and Agreement Regarding IDx and CCF Intellectual property ("Assignment Agreement") with Clinic and IDx. Pursuant to the Assignment Agreement, during the second quarter of 2023, the Company made a one-time payment of \$ 33,400 to Clinic and IDx for the acquisition of patents and other intellectual property. The Assignment Agreement also requires dismissal of the arbitration and release of payment for royalty obligations due to Clinic and IDx under the License Agreement after March 31, 2023. The amount paid, together with transaction costs, was allocated between the acquired intangible asset, the release of payment for royalty obligations and the settlement of the dispute. The intangible asset was assigned a value of \$ 30,000 and is being amortized over an estimated useful life of 5 years. The release of the royalty obligations was valued at \$ 432 . The remaining \$ 3,088 was allocated to the settlement and was included in selling, general and administrative expenses for the three months ended June 30, 2023.

During the first quarter of 2023, the Company entered into a legal settlement for \$ 7,500 in connection with the settlement of claims filed against a competitor. The Company recorded a \$ 3,500 gain for the three months ended June 30, 2023 and \$ 7,500 for the six months ended June 30, 2023 for the proceeds received as a reduction to selling, general and administrative expenses.

10. REVENUE

The Company develops, manufactures and sells devices designed primarily for surgical ablation of cardiac tissue, exclusion of the left atrial appendage, and temporarily blocking pain by ablating peripheral nerves. These devices are marketed to a broad base of medical centers globally. The Company recognizes revenue when control of promised goods is transferred to customers in an amount that reflects the consideration the Company expects to be entitled to in exchange for those goods.

United States revenue by product type is as follows:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2024	2023	2024	2023
Open ablation	\$ 30,760	\$ 27,002	\$ 60,060	\$ 52,144
Minimally invasive ablation	11,828	11,370	24,146	21,007
Pain management	15,006	12,590	27,745	23,658
Total ablation	\$ 57,594	\$ 50,962	\$ 111,951	\$ 96,809
Appendage management	37,945	33,941	73,837	66,283
Total United States	\$ 95,539	\$ 84,903	\$ 185,788	\$ 163,092

International revenue by product type is as follows:

	Three Months Ended		Six Months Ended	
	June 30,		June 30,	
	2024	2023	2024	2023
Open ablation	\$ 9,170	\$ 7,722	\$ 17,072	\$ 15,008
Minimally invasive ablation	1,764	1,375	3,878	3,242
Pain management	1,241	439	2,178	667
Total ablation	\$ 12,175	\$ 9,536	\$ 23,128	\$ 18,917
Appendage management	8,555	6,479	16,204	12,403
Total International	\$ 20,730	\$ 16,015	\$ 39,332	\$ 31,320

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Revenue attributed to customer geographic locations is as follows:

	Three Months Ended		Six Months Ended			
	June 30,	2024	2023	June 30,	2024	2023
United States		\$ 95,539	\$ 84,903	\$ 185,788	\$ 163,092	
Europe		12,630	9,457	23,978	18,858	
Asia Pacific		6,721	6,125	13,002	11,527	
Other International		1,379	433	2,352	935	
Total International		20,730	16,015	39,332	31,320	
Total Revenue		<u>\$ 116,269</u>	<u>\$ 100,918</u>	<u>\$ 225,120</u>	<u>\$ 194,412</u>	

11. INCOME TAX PROVISION

The Company files federal, state and foreign income tax returns in jurisdictions with varying statutes of limitations. The Company uses the asset and liability method to determine its provision for income taxes. The Company's provision for income taxes in interim periods is computed by applying the discrete method and is based on financial results through the end of the interim period. The Company determined that using the discrete method is more appropriate than using the annual effective tax rate method. The Company is unable to estimate the annual effective tax rate with sufficient precision to use the effective tax rate method, which requires a full-year projection of income. The effective tax rate for the three months ended June 30, 2024 and 2023 was (3.3 %) and (1.9 %). The effective tax rate for the six months ended June 30, 2024 and 2023 was (2.1 %) and (1.5 %). The Company's worldwide effective tax rate differs from the US statutory rate of 21% primarily due to valuation allowances.

The Company's federal, state, local and foreign tax returns are routinely subject to review by various taxing authorities. The Company has not accrued any interest and penalties related to unrecognized income tax benefits as a result of offsetting net operating losses. However, if required, the Company will recognize interest and penalties within income tax expense and within the related tax liability.

12. EQUITY COMPENSATION PLANS

The Company has two share-based incentive plans: the 2023 Stock Incentive Plan (2023 Plan) and the 2018 Employee Stock Purchase Plan (ESPP).

Stock Incentive Plan

Under the 2023 Plan, the Board of Directors may grant restricted stock awards or restricted stock units (collectively RSAs), nonstatutory stock options, performance share awards (PSAs) or stock appreciation rights to Company employees, directors and consultants, and may grant incentive stock options to Company employees. The Compensation Committee of the Board of Directors, as the administrator of the 2023 Plan, has the authority to determine the terms of any awards, including the number of shares subject to each award, the exercisability of the awards and the form of consideration. As of June 30, 2024, 4,087 shares of common stock have been reserved for issuance under the 2023 Plan, and 2,543 shares were available for future grants. The Company issues registered shares of common stock for stock option exercises, restricted stock grants and performance share award payments.

Employee Stock Purchase Plan

Under the ESPP, shares of the Company's common stock may be purchased at a discount (15 %) to the lesser of the closing price of the Company's common stock on the first or last trading day of the offering period. The offering period (currently six months) and the offering price are subject to change. Participants may not purchase more than \$ 25 of the Company's common stock in a calendar year or more than 3 shares during an offering period. As of June 30, 2024, there were 621 shares available for future issuance under the ESPP.

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Share-Based Compensation Expense Information

The following table summarizes the allocation of share-based compensation expense:

	Three Months Ended				Six Months Ended			
	June 30,				June 30,			
	2024	2023	2024	2023	2024	2023	2024	2023
Cost of revenue	\$ 628	\$ 471	\$ 1,158	\$ 914				
Research and development expenses	1,733	1,540	3,352	2,844				
Selling, general and administrative expenses	8,030	6,984	15,146	13,997				
Total	<u>\$ 10,391</u>	<u>\$ 8,995</u>	<u>\$ 19,656</u>	<u>\$ 17,755</u>				

13. COMPREHENSIVE LOSS AND ACCUMULATED OTHER COMPREHENSIVE LOSS

In addition to net losses, comprehensive loss includes foreign currency translation adjustments and unrealized gains (losses) on investments.

Accumulated other comprehensive loss consisted of the following, net of tax:

	Three Months Ended				Six Months Ended			
	June 30,				June 30,			
	2024	2023	2024	2023	2024	2023	2024	2023
Total accumulated other comprehensive loss at beginning of period	\$ (697)	\$ (3,072)	\$ (993)	\$ (4,096)				
<u>Unrealized Gains (Losses) on Investments</u>								
Balance at beginning of period	\$ (261)	\$ (2,657)	\$ (800)	\$ (3,698)				
Other comprehensive income before reclassifications	246	427	785	1,468				
Balance at end of period	\$ (15)	\$ (2,230)	\$ (15)	\$ (2,230)				
<u>Foreign Currency Translation Adjustment</u>								
Balance at beginning of period	\$ (436)	\$ (415)	\$ (193)	\$ (398)				
Other comprehensive (loss) income before reclassifications	(125)	28	(388)	153				
Amounts reclassified to other income (expense)	7	8	27	(134)				
Balance at end of period	\$ (554)	\$ (379)	\$ (554)	\$ (379)				
Total accumulated other comprehensive loss at end of period	<u>\$ (569)</u>	<u>\$ (2,609)</u>	<u>\$ (569)</u>	<u>\$ (2,609)</u>				

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Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

(Dollar amounts referenced in this Item 2 are in thousands, except per share amounts.)

The following discussion and analysis of our financial condition and results of operations should be read in conjunction with the accompanying Condensed Consolidated Financial Statements and notes thereto contained in Item 1 of Part I of this Form 10-Q and our audited financial statements and notes thereto as of and for the year ended December 31, 2023 included in our Form 10-K filed with the Securities and Exchange Commission (SEC) to provide an understanding of our results of operations, financial condition and cash flows. This discussion and analysis contains forward-looking statements that involve risks, uncertainties and assumptions. The actual results may differ from those anticipated in these forward-looking statements as a result of many factors, including but not limited to those set forth under Item 1A "Risk Factors," the cautionary statement regarding forward-looking statements below and elsewhere in this Form 10-Q.

Forward-Looking Statements

This Form 10-Q, including the sections titled "Management's Discussion and Analysis of Financial Condition and Results of Operations", "Quantitative and Qualitative Disclosures about Market Risk" and "Risk Factors," contains forward-looking statements regarding our future performance. All forward-looking information is inherently uncertain and actual results may differ materially from assumptions, estimates or expectations reflected or contained in the forward-looking statements as a result of various factors, including those set forth under "Risk Factors" and elsewhere in this quarterly report on Form 10-Q, and in our annual report on Form 10-K for the year ended December 31, 2023. There may be additional risks of which we are not presently aware or that we currently believe are immaterial which could have an adverse impact on our business. Forward-looking statements often address our expected future business, financial performance, financial condition and results of operations, and often contain words such as "intends," "estimates," "anticipates," "hopes," "projects," "plans," "expects," "drives," "seek," "believes," "see," "focus," "should," "will," "would," "opportunity," "outlook," "could," "can," "may," "future," "predicts," "target," "potential," "forecast," "trend," "might" and similar expressions and the negative versions of those words, and may be identified by the context in which they are used. However, the absence of these words does not mean that a statement is not forward-looking. Forward-looking statements include, without limitation, statements that address activities, events, circumstances or developments that AtriCure expects, believes or anticipates will or may occur in the future, such as earnings estimates (including projections and guidance), other predictions of financial performance, launches by AtriCure of new products, developments with competitors and market acceptance of AtriCure's products. Such statements are based largely upon current expectations of AtriCure. Reliance should not be placed on forward-looking statements because they involve known and unknown risks, uncertainties and other factors which may cause actual results, performance or achievements to differ materially from those expressed or implied. Forward-looking statements are based on AtriCure's expectations, experience and perception of current conditions, trends, expected future developments and other factors it believes are appropriate under the circumstances and are subject to numerous risks and uncertainties, many of which are beyond AtriCure's control. In other words, these statements are not guarantees of future performance and inherently involve a wide range of risks and uncertainties that are difficult to predict. With respect to the forward-looking statements, we claim the protection of the safe harbor for forward-looking statements contained in the Private Securities Litigation Reform Act of 1995. These forward-looking statements speak only as of the date of this Form 10-Q. We undertake no obligation to publicly update or revise any forward-looking statements to reflect new information or future events or otherwise unless required by law.

Overview

We are a leading innovator in treatments for atrial fibrillation (Afib), left atrial appendage (LAA) management and post-operative pain management. Our ablation and left atrial appendage management (LAAM) products are used by physicians during both open-heart and minimally invasive procedures. In open-heart procedures, the physician is performing heart surgery for other conditions and our products are used in conjunction with (or "concomitant" to) such a procedure. Minimally invasive procedures are performed on a standalone basis, and often include multi-disciplinary or "hybrid" approaches, combining surgical procedures using AtriCure ablation and LAAM products with catheter ablation procedures performed by electrophysiologists. Our pain management devices are used by physicians to freeze nerves during cardiothoracic or thoracic surgical procedures. We anticipate that substantially all of our revenue for the foreseeable future will relate to products we currently sell or are in the process of developing.

We sell our products to medical centers through our direct sales force in the United States, Germany, France, the United Kingdom, the Benelux region, Australia and Canada. We also sell our products through distributors who in turn sell our products to medical centers in other markets. Our business is primarily transacted in U.S. Dollars; direct sales transactions outside the United States are transacted in Euros, British Pounds, Australian Dollars or Canadian Dollars.

Recent Developments

In 2024, we realized strong global revenue growth and continued our strategic initiatives of product innovation, clinical science and physician education and training to expand awareness and adoption. Our worldwide revenue for the six months ended June 30, 2024 was \$225,120, representing an increase of \$30,708, or 15.8%, over the first six months of 2023, driven by growing adoption across key product lines. Historically there have been limited competitors in our key markets. We are seeing new entrants developing competing products, procedures, and/or clinical solutions that may cause variability in our results.

Highlights of the strategic and operational advancements include:

PRODUCT INNOVATION. We continue to invest in research and development of new products across our business and pursue approvals to market and sell our products globally. Activities for the first half of 2024 include:

- Launch of the cryoSPHERE®+ cryoablation probe for pain management in the US in the second quarter of 2024. The cryoSPHERE®+ device leverages new technology that minimizes thermal loss by focusing energy at the ball tip, allowing for a reduction in freeze time by 25%, which reduces operative time.
- Regulatory approval received from the National Medical Products Administration (NMPA) of China to market and sell several models of our AtriClip® Left Atrial Appendage Exclusion System.
- FDA granted 510(k) clearance for EPi-Ease™, our Hybrid access device to facilitate guide-wire delivery, vacuum application and endoscope insertion.
- Received several CE Mark certifications under the European Medical Device Regulation (EU MDR).

CLINICAL SCIENCE. We invest in studies to expand labeling claims, support various indications for our products and gather and publish clinical data regarding our products. One of our critical initiatives is the Left Atrial Appendage Exclusion for Prophylactic Stroke Reduction (LeAAPS) IDE clinical trial. LeAAPS is designed to evaluate the effectiveness of prophylactic LAA exclusion using the AtriClip LAA Exclusion System for the prevention of ischemic stroke or systemic arterial embolism in cardiac surgery patients without pre-operative AF diagnosis who are at risk for these events. This prospective, multicenter, randomized trial evaluates safety at 30 days post-procedure to demonstrate no increased risk with LAA exclusion during cardiac surgery, and efficacy over a minimum follow-up of five years post procedure. The trial provides for enrollment of up to 6,500 subjects at up to 250 sites worldwide. The first patient was enrolled in the trial in January 2023, and we ended the second quarter of 2024 with over 2,700 patients enrolled. Site initiation and enrollment is ongoing.

TRAINING. Our professional education and marketing teams conduct a variety of in-person and virtual training programs for physicians and other healthcare professionals. These training methods ensure invaluable access to continuing education and awareness of our products and related procedures. During 2023, we launched new training courses for Advanced Practice Providers, pain management in pectus procedures, as well as a best practice course for developing arrhythmia programs, with a primary focus on Hybrid therapies. These training events allow for collaborative, hands-on engagement with our physician partners and other healthcare professionals. Additionally, our professional education courses continue to be enhanced by the use of simulation models or synthetic cadavers, known as CADets. These reusable CADets provide a sustainable alternative to the use of cadaver specimens, in addition to increasing the efficiencies of education and more cost effective training alternatives.

Results of Operations

Three months ended June 30, 2024 compared to three months ended June 30, 2023

The following table sets forth, for the periods indicated, our results of operations expressed as dollar amounts and as percentages of revenue:

	Three Months Ended June 30,			
	2024		2023	
	Amount	% of Revenues	Amount	% of Revenues
Revenue	\$ 116,269	100.0 %	\$ 100,918	100.0 %
Cost of revenue	29,425	25.3	23,841	23.6
Gross profit	86,844	74.7	77,077	76.4
Operating expenses:				
Research and development expenses	20,416	17.6	17,438	17.3
Selling, general and administrative expenses	73,596	63.3	63,783	63.2
Total operating expenses	94,012	80.9	81,221	80.5
Loss from operations	(7,168)	(6.2)	(4,144)	(4.1)
Other expense, net:	(587)	(0.5)	(881)	(0.9)
Loss before income tax expense	(7,755)	(6.7)	(5,025)	(5.0)
Income tax expense	253	0.2	93	0.1
Net loss	\$ (8,008)	(6.9) %	\$ (5,118)	(5.1) %

Revenue. The following table sets forth, for the periods indicated, our revenue by product type and geography expressed as dollar amounts and the corresponding change in such revenues between periods, in both dollars and percentages:

	Three Months Ended June 30,			Change	
	2024		2023	Amount	%
	Amount	%	Amount	Amount	%
Open ablation	\$ 30,760	\$ 27,002	\$ 3,758	13.9 %	
Minimally invasive ablation	11,828	11,370	458	4.0	
Pain management	15,006	12,590	2,416	19.2	
Appendage management	37,945	33,941	4,004	11.8	
Total United States	\$ 95,539	\$ 84,903	\$ 10,636	12.5	
Total International	20,730	16,015	4,715	29.4	
Total revenue	\$ 116,269	\$ 100,918	\$ 15,351	15.2 %	

Worldwide revenue increased 15.2% (15.4% on a constant currency basis). In the United States, we experienced growth in several key product lines, including our ENCOMPASS [®] clamp in open ablation and the AtriClip[®] Flex-V[®] for appendage management in open-chest procedures. In addition, the full launch of the cryoSPHERE [®]+ probe in the second quarter augmented strong growth in post-operative pain management sales. Growth in minimally invasive ablation was driven by our Epi-Sense[®] System devices for Hybrid AF[™] Therapy. International sales increased 29.4% (30.4% on a constant currency basis), with strength across all franchises and most of our major markets.

Revenue reported on a constant currency basis is a non-GAAP measure calculated by applying previous period foreign currency exchange rates, which are determined by the average daily exchange rate, to each of the comparable periods. Revenue is analyzed on a constant currency basis to better measure the comparability of results between periods. Because changes in foreign currency exchange rates have a non-operating impact on revenue, we believe that evaluating growth in revenue on a constant currency basis provides an additional and meaningful assessment of revenue to both management and investors.

Cost of revenue and gross margin. Cost of revenue increased \$5,584 primarily reflecting higher sales volumes. Gross margin decreased 168 basis points, driven primarily by unfavorable geographic and product mix, as well as increased product costs.

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Research and development expenses. Research and development expenses increased \$2,978 or 17.1%. Expansion of product development, clinical and regulatory teams resulted in \$1,525 increase in personnel costs including travel and share-based compensation. Clinical trial expenses increased \$1,331 primarily from higher patient enrollment and follow-up activity in the LeAAPs clinical trial throughout the quarter.

Selling, general and administrative expenses. Selling, general and administrative expenses increased \$9,813, or 15.4%, driven by a \$6,997 increase in personnel costs including travel and share-based compensation, primarily reflecting headcount growth. Marketing, training, and meeting costs increased \$725 and legal and professional services, IT and other corporate costs grew \$848. Fluctuation was also driven by legal settlements in the prior year, resulting in a \$412 non-recurring net gain recorded in 2023.

Other income (expense). Other income and expense consists primarily of net interest expense and net foreign currency transaction losses.

Six months ended June 30, 2024 compared to six months ended June 30, 2023

The following table sets forth, for the periods indicated, our results of operations expressed as dollar amounts and as percentages of revenue:

	Six Months Ended June 30,			
	2024		2023	
	Amount	% of Revenues	Amount	% of Revenues
Revenue	\$ 225,120	100.0 %	\$ 194,412	100.0 %
Cost of revenue	57,008	25.3	47,726	24.5
Gross profit	168,112	74.7	146,686	75.5
Operating expenses:				
Research and development expenses	40,261	17.9	32,765	16.9
Selling, general and administrative expenses	145,936	64.8	123,847	63.7
Total operating expenses	186,197	82.7	156,612	80.6
Loss from operations	(18,085)	(8.0)	(9,926)	(5.1)
Other expense, net:	(2,756)	(1.2)	(1,497)	(0.8)
Loss before income tax expense	(20,841)	(9.3)	(11,423)	(5.9)
Income tax expense	436	0.2	171	0.1
Net loss	\$ (21,277)	(9.5) %	\$ (11,594)	(6.0) %

Revenue. The following table sets forth, for the periods indicated, our revenue by product type and geography expressed as dollar amounts and the corresponding change in such revenues between periods, in both dollars and percentages:

	Six Months Ended June 30,			Change	
	2024		2023	Amount	%
	Amount	%	Amount	Amount	%
Open ablation	\$ 60,060	\$ 52,144	\$ 7,916	\$ 7,916	15.2 %
Minimally invasive ablation	24,146	21,007	3,139	3,139	14.9
Pain management	27,745	23,658	4,087	4,087	17.3
Appendage management	73,837	66,283	7,554	7,554	11.4
Total United States	\$ 185,788	\$ 163,092	\$ 22,696	\$ 22,696	13.9
Total International	39,332	31,320	8,012	8,012	25.6
Total revenue	\$ 225,120	\$ 194,412	\$ 30,708	\$ 30,708	15.8 %

Worldwide revenue increased 15.8% (15.8% on a constant currency basis). In the United States, growth in key product lines reflected continuing adoption of our products, including the ENCOMPASS® clamp in open ablation, Hybrid AF™ Therapy procedures using the EPi-Sense System in minimally invasive ablation, cryoSPHERE® probe for post-operative pain

management and AtriClip® Flex-V® for appendage management in open-chest procedures. International sales increased 25.6% (25.8% on a constant currency basis), across all franchises and most major geographic regions.

Cost of revenue and gross margin. Cost of revenue increased \$9,282, reflecting higher sales volumes, while gross margin decreased 77 basis points, primarily driven by unfavorable geographic and product mix, as well as an increase in product costs.

Research and development expenses. Research and development expenses increased \$7,496 or 22.9%, primarily from a \$3,489 increase in personnel costs as a result of additional headcount in our product development, regulatory, and clinical teams. Clinical trial expenses increased \$2,786 due to increased clinical activity primarily driven by the LeAAPS trial. Product development project spend and consulting costs also contributed incremental expense of \$1,141, reflecting continued investment in our product pipeline.

Selling, general and administrative expenses. Selling, general and administrative expenses increased \$22,089, or 17.8%, due to a \$13,426 increase in personnel costs, including travel and share-based compensation, as a result of growth in headcount. Selling, general and administrative expenses were also increased by \$1,569 in marketing, training and meeting activities, and \$1,433 in legal and professional services, IT and corporate costs reflecting operational growth. The increase was further driven by a \$4,466 non-recurring net gain during 2023 related to legal settlements.

Other income (expense). During the first quarter of 2024, the Company recognized a loss on debt extinguishment of \$1,362; see Note 7 - Indebtedness for related discussion. The remaining activity consists primarily of net interest expense and net foreign currency transaction losses.

Liquidity and Capital Resources

As of June 30, 2024, the Company had cash, cash equivalents and investments of \$114,020 and outstanding debt of \$61,865. We had unused borrowing capacity of \$61,885 (see Note 7 - Indebtedness for related discussion). All cash equivalents and investments and most of our operating cash are held in United States financial institutions. A small portion of our cash is held in foreign banks to support our international operations. We had net working capital of \$191,627 and an accumulated deficit of \$378,334 as of June 30, 2024.

	Six Months Ended June 30,		
	2024	2023	Change
	(dollars in thousands)		
Net cash used in operating activities	\$ (13,636)	\$ (1,068)	\$ 12,568
Net cash provided by investing activities	40,535	12,733	27,802
Net cash used in financing activities	(5,008)	(2,523)	2,485

Cash flows used in operating activities. Net cash used in operating activities increased \$12,568 from 2023 to 2024, driven by a decrease in operating results of \$9,683, primarily due to a prior year \$4,466 nonrecurring net gain for legal settlements, partially offset by a current period increase in non-cash charges of \$5,575. Cash used for working capital and other assets and liabilities increased \$8,460 on higher annual variable compensation payments due to improved operating performance, partially offset by increased collections of receivables and fewer purchases of inventory.

Cash flows provided by investing activities. Net cash provided by investing activities increased by \$27,802 in 2024 compared to 2023, due to the \$30,000 in cash paid for acquisition of intellectual property in the prior year, offset by a \$2,647 decrease in sales and maturities of available-for-sale securities and \$424 decrease in purchases of property and equipment.

Cash flows used in financing activities. Net cash used in financing activities increased by \$2,485 in 2024. This increase was a result of a \$1,556 payment for extinguishment of debt and financing fees, net of borrowings, and a \$658 increase in shares repurchased for payment of taxes on stock awards.

Credit facility. As of January 5, 2024, we entered into a credit agreement (Credit Agreement) with JPMorgan Chase Bank, N.A. as Administrative Agent, JPMorgan Chase Bank, N.A. and Silicon Valley Bank, a division of First-Citizens Bank and Trust Company, as Joint Lead Arrangers and Joint Bookrunners that provides for a \$125,000 asset-based revolving credit facility (ABL Facility), with an option to increase the revolving commitment by an additional \$40,000. A portion of the ABL Facility, limited to \$5,000, is available for the issuance of letters of credit. The Credit Agreement has a three-year term and expires January 5, 2027. Amounts available to be drawn from time to time under the ABL Facility are determined by calculating the applicable borrowing base, which is based upon applicable percentages of the values of eligible accounts.

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receivable, eligible inventory, eligible liquid assets, less reserves as determined by the Administrative Agent, all as specified in the Credit Agreement. The borrowings bear interest at a rate per annum equal to, at the Company's election: (i) an alternate base rate (ABR) plus an applicable margin or (ii) an adjusted term secured overnight financing rate (SOFR) plus an applicable margin. As of June 30, 2024, the Company has borrowed \$61,865, classified as noncurrent and had unused borrowing availability of \$61,885.

Our corporate headquarters lease agreement requires a \$1,250 letter of credit which we renew annually and remains outstanding as of June 30, 2024.

For additional information on the terms and conditions, as well as applicable interest and fee payments, see Note 7 – Indebtedness.

Uses of liquidity and capital resources. Our executive officers and Board of Directors review our funding sources and future capital requirements in connection with our annual operating plan and periodic updates to the plan. Our future capital requirements depend on a number of factors, including, without limitation: market acceptance of our current and future products; costs to develop and support our products, including professional training; costs to expand and support our sales and marketing efforts; operating and filing costs relating to changes in regulatory policies or laws; costs for clinical trials and to secure regulatory approval for new products; costs to prosecute, defend and enforce our intellectual property rights; maintenance and enhancements to our information systems and security; and possible acquisitions and joint ventures, including potential business integration costs. We continue to evaluate additional measures to maintain financial flexibility, and we will continue to closely monitor macroeconomic conditions including, but not limited to, inflationary pressures, rising interest rates, and fluctuations in currency exchange rates that may impact our liquidity and access to capital resources. Our principal cash requirements include costs of operations, capital expenditures, debt service costs and other contractual obligations.

Critical Accounting Policies and Estimates

Our discussion and analysis of our financial condition and results of operations is based upon our financial statements, which have been prepared in accordance with accounting principles generally accepted in the United States of America (GAAP). The preparation of financial statements requires management to make estimates and judgments that affect the reported amounts of assets and liabilities, revenue and expenses and disclosures of contingent assets and liabilities at the date of the financial statements. On a periodic basis, we evaluate our estimates, including those related to sales returns and allowances, inventories, share-based compensation and income taxes. We use authoritative pronouncements, historical experience and other assumptions as the basis for making estimates. Actual results could differ from those estimates under different assumptions or conditions. Our Annual Report on Form 10-K for the fiscal year ended December 31, 2023 includes additional information about the Company, our operations, our financial position and our critical accounting policies and estimates and should be read in conjunction with this Quarterly Report on Form 10-Q.

Recent Accounting Pronouncements

As of June 30, 2024, there were no material changes to the information provided regarding recent accounting pronouncements in Note 1, "Description of the Business and Summary of Significant Accounting Policies" in the Company's Form 10-K for the fiscal year ended December 31, 2023.

Item 3. Quantitative and Qualitative Disclosures About Market Risk

As of June 30, 2024, there were no material changes to the information provided under Item 7A, "Quantitative and Qualitative Disclosures About Market Risk" in the Company's Form 10-K for the year ended December 31, 2023.

Item 4. Controls and Procedures

Evaluation of Disclosure Controls and Procedures

The Company's management, with the participation of the President and Chief Executive Officer (the Principal Executive Officer) and Chief Financial Officer (the Principal Accounting and Financial Officer), has evaluated the effectiveness of the Company's disclosure controls and procedures, as defined in Rules 13(a) -15(e) and 15(d) -15(e) of the Securities Exchange Act of 1934 as amended (Exchange Act), as of the end of the period covered by this report. Based on this evaluation, we concluded that, as of the end of the period covered by this report, our disclosure controls and procedures were effective in providing reasonable assurance that information required to be disclosed by us in the reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specified in the SEC's forms and rules, and the material information relating to the Company is accumulated and communicated to management, including the

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President and Chief Executive Officer and the Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Control systems, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that control objectives are met. Because of inherent limitations in all control systems, no evaluation of controls can provide assurance that all control issues and instances of fraud, if any, within a company will be detected. Additionally, controls can be circumvented by individuals, by collusion of two or more people or by management override. Over time, controls can become inadequate because of changes in conditions or the degree of compliance may deteriorate. Further, the design of any system of controls is based in part upon assumptions about the likelihood of future events. There can be no assurance that any design will succeed in achieving its stated goals under all future conditions. Because of the inherent limitations in any cost-effective control system, misstatements due to errors or fraud may occur and not be detected.

Changes in Internal Control Over Financial Reporting

In the ordinary course of business, we routinely enhance our information systems by either upgrading current systems or implementing new ones. There were no changes in our internal control over financial reporting that occurred during the three months ended June 30, 2024 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. Legal Proceedings

Information with respect to legal proceedings can be found under the heading "Legal" in Note 9 – Commitments and Contingencies to the Condensed Consolidated Financial Statements in Part I, Item 1 of this Quarterly Report on Form 10-Q, and is incorporated herein by reference.

Item 1A. Risk Factors

In addition to the other information set forth in this report, careful consideration should be given to the factors discussed in Item 1A, "Risk Factors" in our Form 10-K for the year ended December 31, 2023, which could materially affect our business, financial condition or future results. The risks described therein are not the only risks facing us. Additional risks and uncertainties not currently known to us, or that we currently deem to be immaterial, also may adversely affect our business, financial condition and/or operating results. There have been no material changes with respect to the risk factors previously disclosed in our Annual Report on Form 10-K for the year ended December 31, 2023, which are incorporated herein by reference.

Item 5. Other Information

During the three months ended June 30, 2024, none of our executive officers or directors adopted, terminated or modified a "Rule 10b5-1(c) trading arrangement" or a "non-Rule 10b5-1 trading arrangement" (as each term is defined in Item 408 of Regulation S-K).

Effective July 30, 2024, the Board of Directors approved the Amended and Restated Bylaws of AtriCure, Inc. ("Amended and Restated Bylaws"). The Amended and Restated Bylaws include updates and changes related to the following:

- Revisions to reflect and conform to the current provisions of the Delaware General Corporation Law (the "DGCL"), including, but not limited to, provisions relating to the manner of providing notice of stockholder meetings, the adjournment of stockholder meetings, the list of stockholders entitled to vote at stockholder meetings, and stock certificates;
- Revisions to clarify (i) that the Board may adopt rules and regulations for the conduct of stockholder meetings, and (ii) the authority of a stockholder meeting chair to adopt and enforce rules and regulations for the conduct of stockholder meetings, including rules related to when polls open and close and procedures for maintaining order at meetings and safety for attendees;
- Stockholders soliciting proxies must use a proxy card color other than white, which shall be reserved for the exclusive use of the Board;
- For a person to be qualified to stand for election or re-election as a director, the person is required to timely deliver, or cause to be delivered, to the secretary of the Company both (i) such person's written consent to be named in a proxy

statement relating to the meeting of stockholders at which directors are to be elected and (ii) a completed and signed questionnaire with respect to background, qualifications, stock ownership and independence;

- For a person nominated by a stockholder to be qualified to stand for election or re-election as a director, the nominating stockholder must timely deliver to the secretary of the Company certain representations, to ensure compliance with the applicable requirements of Rule 14a-19 under the Securities Exchange Act of 1934, as amended and, if such stockholder, any beneficial owner on whose behalf the nomination is submitted or any person who controls either of the foregoing stockholder or beneficial owner, directly or indirectly, acts contrary to any such representations, such nominee will be disqualified from standing for election or re-election as a director;
- Revisions to the indemnification and advancement provisions to, among other things, (i) clarify that the Company shall, to the fullest extent permitted by applicable law, indemnify, and advance expenses incurred in defending a proceeding to, any person who was or is made a party or threatened to be made a party to any proceeding by reason of the fact that he or she is or was a director or an officer of the Company or, while serving as a director or officer of the Company, is or was serving at the request of the Company as a director, officer, employee or agent of another entity, (ii) clarify that the prohibition on indemnification in connection with a proceeding initiated by an indemnitee does not apply to a proceeding, or part thereof, initiated to enforce a right to indemnification or advancement or a compulsory counterclaim, and (iii) provide that an indemnitee can bring an action to enforce a right to advancement of expenses if a claim therefor is not paid in full within 20 days.
- The Delaware Court of Chancery shall be the sole and exclusive forum for any stockholder to bring certain actions, including, without limitation, derivative actions, claims for breach of fiduciary duty, claims arising under the DGCL, claims governed by the internal affairs doctrine, and actions in the right of the Company asserting claims as to which the DGCL confers jurisdiction to the Delaware Court of Chancery;
- The federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.
- Implementing other ministerial changes, clarifications, and conforming revisions.

The foregoing summary of the Amended and Restated Bylaws does not purport to be complete and is qualified in its entirety by reference to full text of the Amended and Restated Bylaws, filed as Exhibit 3.2 to this Quarterly Report on Form 10-Q, and incorporated herein by reference.

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Item 6. Exhibits

Exhibit No.	Description
3.1	Restated Certificate of Incorporation (incorporated by reference to our Current Report on Form 8-K filed on May 14, 2024).
3.2	Amended and Restated Bylaws.
3.3	Amended and Restated Bylaws (marked to show changes).
10.1#	AtriCure, Inc. 2023 Stock Incentive Plan (Amended and Restated as of May 13, 2024) (incorporated by reference to our Current Report on Form 8-K filed on May 14, 2024).
31.1	Rule 13a-14(a) Certification of Principal Executive Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Rule 13a-14(a) Certification of Principal Accounting and Financial Officer Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32.1	Certification pursuant to 18 U.S.C. Section 1350 by the Principal Executive Officer, as adopted, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
32.2	Certification pursuant to 18 U.S.C. Section 1350 by the Principal Accounting and Financial Officer, as adopted, pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
101.INS	XBRL Instance Document
101.SCH	XBRL Taxonomy Extension Schema Document
101.CAL	XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF	XBRL Taxonomy Definition Linkbase Document
101.LAB	XBRL Taxonomy Extension Label Linkbase Document
101.PRE	XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

Compensatory plan or arrangement.

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SIGNATURES

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

AtriCure, Inc.
(REGISTRANT)

Date: July 31, 2024

/s/ Michael H. Carrel

Michael H. Carrel
President and Chief Executive Officer
(Principal Executive Officer)

Date: July 31, 2024

/s/ Angela L. Wirick

Angela L. Wirick
Chief Financial Officer
(Principal Accounting and Financial Officer)

Exhibit 3.2

AMENDED AND RESTATED BYLAWS OF
ATRICURE, INC.
(a Delaware corporation)

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**AMENDED AND RESTATED
BYLAWS OF ATRICURE, INC.**

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of AtriCure, Inc. (the “corporation”) shall be fixed in the corporation’s certificate of incorporation, as the same may be amended from time to time (the “certificate of incorporation”).

1.2 OTHER OFFICES.

The corporation may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

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

2.2 ANNUAL MEETING.

The annual meeting of stockholders shall be held each year on a date and time designated by the Board (or its designee). At the annual meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING.

A special meeting of stockholders may be called at any time by the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer), but such special meetings may not be called by any other person or persons.

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

2.4 ADVANCE NOTICE PROCEDURES; NOTICE OF STOCKHOLDERS' MEETINGS.

(i) At an annual meeting of 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, (B) otherwise properly brought before the meeting by or at the direction of the Board, 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, and not more than one hundred fifty (150) calendar days, before the one year anniversary of the date on which the corporation first mailed its proxy statement 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 of the prior year's meeting, notice by the stockholder to be timely must be so received not later than the close of business on the later of one hundred fifty (150) calendar days in advance of such annual meeting and ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (a) 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, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation that are beneficially owned by the stockholder, (d) any material interest of the stockholder in such business, and (e) 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 "1934 Act"), in his capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. 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 (i). 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 (i), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(ii) Only persons who are nominated in accordance with the procedures set forth in this paragraph (ii) shall be eligible for election as directors. Nominations of persons for election to the Board may be made at a meeting of stockholders by or at the direction of the Board 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 (ii). Such nominations, other than those made by or at the direction of the Board, shall be made pursuant to timely notice in writing to the secretary of the corporation in accordance with the provisions of paragraph (i) of this Section 2.4. Such stockholder's notice shall set forth (a) 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 that 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 elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (b) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (i) of this Section 2.4. At the request of the Board, 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 (ii). 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 if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

These provisions shall not prevent the consideration and approval or disapproval at an annual meeting of reports of officers, directors and committees of the Board, but in connection therewith no new business shall be acted upon at any such meeting unless stated, filed and received as herein provided. Notwithstanding anything in these bylaws to the contrary, no business brought before a meeting by a stockholder shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 2.4.

All notices of meetings of stockholders shall be sent or otherwise given in accordance with either Section 2.5 or Section **Error! Reference source not found.** of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise required by applicable law. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be deemed given as provided in Section 232 of the DGCL.

An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or any other agent of the corporation that the notice has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein.

2.6 QUORUM.

Except as otherwise required by law or the certificate of incorporation, the holders of a majority of the voting power of the stock issued and outstanding and entitled to vote thereat,

present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, such quorum is not present or represented by proxy at any meeting of stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place (if any) (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place (if any) thereof, and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken, displayed, during the time proxy holders scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or set forth in the notice of the meeting given in accordance with Section 222 of the DGCL. 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, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS.

Such person as the Board may have designated or, in the absence of such a person, the chief executive officer, or in his or her absence, the president, shall call to order any meeting of the stockholders and act as chairperson of the meeting. In the absence of the secretary of the corporation, the secretary of the meeting shall be such person as the chairperson of the meeting appoints. The Board may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of the meeting shall have the authority to adopt and enforce rules and regulations providing for the orderly conduct of the meeting and the safety of those in attendance, as, in the judgement of the chairperson of the meeting, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board or by the chairperson of the meeting, may include, without limitation, the authority to: (i) determine when the polls will open and close on items submitted for stockholder action and matters which are to be voted on by ballot (if any); (ii) establish an agenda or order of business for the meeting and fix the time allotted for consideration of each agenda item and for questions and comments by persons in attendance; (iii) adopt rules for determining who may pose questions and comments during the meeting; (iv) adopt rules for determining who may attend or participate in the meeting.

including, without limitation, so limiting such attendees or participants to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies, qualified representatives (including rules around who qualifies as such) and such other persons as the chairperson of the meeting shall permit; (v) adopt procedures, if any, requiring attendees to provide the corporation advance notice of their intent to attend the meeting; (vi) adopt rules and procedures for maintaining order at the meeting and the safety of those present; and (vii) adopt restrictions on entry to the meeting after the time fixed for the commencement thereof. The chairperson may adjourn or recess any meeting of stockholders, whether or not there is a quorum present at the meeting, and notice of such adjournment or recess need be given only if required by law.

2.9 VOTING.

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. The stockholders of the corporation shall not have the right to cumulate their votes for the election of directors of the corporation.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class or series of stock of the corporation having a preference over the Common Stock as dividend or upon liquidation, and except as otherwise provided in the certificate of incorporation, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS.

(i) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may, except as otherwise required by law, fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and 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.

(ii) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that

the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 2.11 at the adjourned meeting.

(iii) 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 may fix a record date, which such record date shall not precede the date upon which the resolution fixing the record date is adopted, and which such record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.12 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized in accordance with Section 212 of the DGCL, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use of the Board.

A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The corporation shall prepare, no later than the tenth (10th) day before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder, provided, however if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of ten (10) days ending on the day before the meeting date; (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal executive office. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation.

2.14 INSPECTORS OF ELECTION.

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

- (i) ascertain the number of shares outstanding and the voting power of each and determine the shares represented at the meeting and validity of proxies and ballots;
- (ii) count all votes and ballots;
- (iii) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspector(s); and
- (iv) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

Each inspector before entering upon the discharge of the duties of inspector, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is *prima facie* evidence of the facts stated therein.

2.15 DELIVERY TO THE CORPORATION.

Irrespective of Section 116 of the DGCL, whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation, letter or other document or agreement), such document or information must be in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

ARTICLE III - DIRECTORS

3.1 POWERS.

Subject to the provisions of the DGCL and any limitations in the certificate of incorporation or these bylaws relating to action required to be approved by the stockholders, all corporate powers shall be exercised by or under the direction of the Board.

3.2 NUMBER OF DIRECTORS.

The authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of not less than six (6) nor more than twelve (12) members. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the next annual meeting and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws.

(i) The corporation has established a majority voting standard in uncontested elections of directors. In an uncontested election of directors (i.e., an election where, as of the tenth (10th) day preceding the date the corporation first gives its notice of meeting for such meeting to stockholders, the number of nominees does not exceed the number of directors to be elected at the meeting), each director shall be elected by a majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. In any election of directors that is not an uncontested election, directors shall be elected by a plurality of the votes cast. For purposes of this Section 3.3, "a majority of the votes cast" means that the number of shares voted "for" a director must exceed the number of votes cast "against" that director's election. "Abstentions" and "broker non-votes" shall not be counted as votes cast with respect to a director's election.

(ii) Following certification of the stockholder vote in an uncontested election, any incumbent director who received a greater number of votes "against" his or her election than votes "for" his or her election shall promptly tender his or her resignation, contingent upon acceptance of such resignation by the Board in accordance with this Section 3.3, to the chairperson of the Board. The chairperson of the Board shall inform the chairperson of the Nominating and Corporate Governance Committee of such tender of resignation and the Nominating and Corporate Governance Committee shall promptly consider such resignation and recommend to the Board whether to accept the tendered resignation or reject it. In deciding upon its recommendation, the Nominating and Corporate Governance Committee shall consider all relevant factors including, without limitation, the length of service and qualifications of the director who has tendered his or her resignation and the director's contributions to the corporation and the Board.

(iii) The Board shall act on the Nominating and Corporate Governance Committee's recommendation no later than ninety (90) days following certification of the stockholder vote. The Board shall consider the factors considered by the Nominating and Corporate Governance Committee and such additional information and factors the Board deems relevant. The corporation shall promptly publicly disclose the decision of the Board and, if applicable, the reasons for rejecting the tendered resignation, in a Report on Form 8-K filed with the Securities and Exchange Commission.

(iv) If a director's resignation is accepted by the Board, the Nominating and Corporate Governance Committee shall recommend to the Board whether to fill the vacancy created by such resignation or to reduce the size of the Board.

3.4 QUALIFICATIONS.

(i) For a person to be qualified to stand for election or re-election as a director, such person shall (1) in the case of an annual meeting of stockholders, no later than the one hundred twentieth (120th) day before the one year anniversary of the date on which the corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders, or, 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 of the prior year's meeting, no later than the one hundred fiftieth (150th) day prior to such annual meeting or the tenth (10th) day following the date on which public announcement of the date of the meeting is first made by the corporation and (2) in the case of a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting, no later than the one hundred fiftieth (150th) day prior to such special meeting or the tenth (10th) day following the date on which public announcement of the date of the special meeting is first made by the corporation, deliver, or shall cause to be delivered, to the secretary of the corporation the following:

(a) such person's written consent to being named in a proxy statement relating to the meeting of stockholders at which directors are to be elected and to serve if elected, and

(b) a completed and signed written questionnaire with respect to the background, qualifications, stock ownership and independence of such person (the form of which shall be provided by the secretary within five (5) business days following a written request therefor).

(ii) In addition to satisfying the qualifications set forth in the preceding paragraph, in the case of a person nominated for election or re-election as a director by a stockholder in accordance with the procedures set forth in the certificate of incorporation and these bylaws (a "Stockholder Nominee"), such Stockholder Nominee shall not be qualified to stand for election or re-election as a director unless the stockholder submitting such nomination delivers, within the time periods set forth in Section 3.4(i) of these bylaws, a written representation:

(a) as to whether or not such stockholder, any beneficial owner on whose behalf such Stockholder Nominee's nomination is made or any affiliate who controls either of the foregoing stockholder or beneficial owner, directly or indirectly (each a "Proponent"), will or is part of a group that will solicit proxies in support of any proposed nominee in accordance with Rule 14a-19 ("Rule 14a-19") promulgated under the Securities Exchange Act of 1934, as amended, and

(b) that, if a Proponent has represented that it (or a group of which such Proponent is a part) will conduct such a solicitation, such Proponent will (A) notify the corporation if such Proponent (or a group of which such Proponent is a

part) no longer intends to solicit proxies in accordance with Rule 14a-19, which notice shall be delivered in writing to the secretary at the principal executive offices of the corporation no later than two (2) business days after the occurrence of such change in intent, and (B) promptly (and in any event no more than two (2) business days) after such Proponent (or a group of which such Proponent is a part) has solicited proxies in accordance with Rule 14a-19, provide the corporation with reasonable evidence, which may take the form of a statement and documentation from a proxy solicitor, demonstrating that the necessary steps have been taken to solicit holders of the corporation's stock in accordance with Rule 14a-19; provided, however, that such Stockholder Nominee shall be disqualified from standing for election or re-election as a director if a Proponent acts contrary to any representation required by clause (a) or (b) of this Section 3.4(ii).

(iii) The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.5 RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies. Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board, although less than a quorum. A person so elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election and until his or her successor shall have been duly elected and qualified.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

3.6 PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board may hold meetings, both regular and special, at such places (if any) either within or outside the State of Delaware.

Unless otherwise restricted by the certificate of incorporation or these bylaws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board, or

committee, as applicable, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

3.7 REGULAR MEETINGS.

Regular meetings of the Board may be held without notice at such time and at such place (if any) as shall from time to time be determined by the Board.

3.8 SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors. The date, time and place, if any, of the meeting shall be determined by the person or persons who called the meeting in accordance with the preceding sentence.

Notice of the time and place (if any) of special meetings shall be:

- (i) delivered personally by hand or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

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

If the notice is (x) delivered personally by hand or by telephone, (y) sent by facsimile or (z) sent by electronic mail, it shall be delivered or sent at least twenty-four (24) hours before the time of the holding of the meeting. If the notice is sent by United States mail, it shall be deposited in the United States mail at least four (4) days before the time of the holding of the meeting. The notice need not specify the purpose of the meeting.

3.9 QUORUM.

At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission. After an action is taken, the writing or writings or electronic transmission or transmissions shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made, and such consent shall be deemed to have been given for purposes of this section at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

3.11 FEES AND COMPENSATION OF DIRECTORS.

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

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

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

4.2 COMMITTEE MINUTES.

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

4.3 MEETINGS AND ACTION OF COMMITTEES.

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

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings and notice);
- (iv) Section 3.8 (quorum);
- (v) Section 7.12 (waiver of notice); and
- (vi) Section 3.9 (action without a meeting)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. However:

- (x) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (y) special meetings of committees may also be called by resolution of the Board; and
- (z) the Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V - OFFICERS

5.1 OFFICERS.

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

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or Section 5.5 of these bylaws.

5.3 SUBORDINATE OFFICERS.

The Board may appoint, or empower the chief executive officer or, in the absence of a chief executive officer, the president, to appoint, such other officers as the business of the corporation may require. Each of such officers shall hold office for such period, have such

authority, and perform such duties as are provided in these bylaws or as the Board may from time to time determine or as the Board may empower the chief executive officer (or in his or her absence, the president) to determine.

5.4 REMOVAL AND RESIGNATION OF OFFICERS.

Any officer may be removed, either with or without cause, by the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

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

5.5 VACANCIES IN OFFICES.

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

5.6 REPRESENTATION OF SECURITIES OF OTHER ENTITIES.

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

5.7 AUTHORITY AND DUTIES OF OFFICERS.

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

ARTICLE VI - RESERVED

Reserved.

ARTICLE VII - GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

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

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates shall be entitled to have a certificate signed by, or in the name of the corporation by any two (2) authorized officers of the corporation (including, without limitation, the chairperson or vice-chairperson of the Board, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary) representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

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

7.3 SPECIAL DESIGNATION ON CERTIFICATES.

If the corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section

202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the corporation shall issue to represent such class or series of stock a statement that the corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights.

7.4 LOST CERTIFICATES.

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

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person. If the certificate of incorporation provides for more or less than one (1) vote for any share, on any matter, every reference in these bylaws to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

7.6 DIVIDENDS.

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

The Board may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

7.7 FISCAL YEAR.

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

7.8 SEAL.

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

7.9 TRANSFER OF STOCK.

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation 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 in its books.

7.10 STOCK TRANSFER AGREEMENTS.

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

7.11 REGISTERED STOCKHOLDERS.

The corporation:

- (i) 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
- (ii) shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of another person, whether or not it shall have express or other notice thereof, except as otherwise provided by the laws of Delaware.

7.12 WAIVER OF NOTICE.

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

ARTICLE VIII - RESERVED.

Reserved.

ARTICLE IX - INDEMNIFICATION

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether of a civil, criminal, administrative, legislative, investigative or other nature (a “Proceeding”) by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or officer of the corporation or, while serving as a director or officer of the corporation, is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, or other enterprise or non-profit entity, including service with respect to employee benefit plans (an “indemnitee”), whether the basis of such Proceeding is alleged action in an official capacity as a director or officer of the corporation or in any other capacity while serving as a director or officer of the corporation, against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such indemnitee in connection with any such Proceeding. Notwithstanding the previous sentence, the corporation shall not be required to indemnify an indemnitee in connection with a Proceeding (or part thereof) initiated by such indemnitee unless (i) the Proceeding (or part thereof) was authorized by the Board, except as provided in Section 9.4 of this Article IX with respect to proceedings to enforce rights to advancement or indemnification or (ii) the Proceeding (or part thereof) is initiated to enforce rights to indemnification or advancement of expenses as provided under Section 9.4 below or is a compulsory counterclaim brought by such indemnitee. Any reference to an officer of the corporation in this Article IX shall be deemed to refer exclusively to the chief executive officer, president, chief financial officer, secretary, treasurer, and any other officer of the corporation elected or appointed as such by the Board pursuant to Section 5.2 of these bylaws.

9.2 INDEMNIFICATION OF OTHERS.

The corporation shall have the power to indemnify and hold harmless and advance expenses to, to the extent and in the manner permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, or other enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such person in connection with any such Proceeding.

9.3 PREPAYMENT OF EXPENSES.

The corporation shall pay the expenses incurred by or on behalf of an indemnitee, and may pay the expenses incurred by any current or former employee or agent of the corporation, in defending any Proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by or on behalf of an indemnitee in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the indemnitee to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right of appeal that an indemnitee is not entitled to be indemnified under this Article IX or otherwise.

9.4 DETERMINATION; CLAIM.

If a claim for indemnification under this Article IX is not paid to an indemnitee in full within sixty (60) days, or if a claim for any advancement of expenses under this Article IX is not paid in full within twenty (20) days, after a written claim therefor has been received by the corporation, the indemnitee may at any time thereafter file suit against the corporation in the Delaware Court of Chancery seeking an adjudication of entitlement to such indemnification or advancement of expenses. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145 of the DGCL. In any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145 of the DGCL. Neither the failure of the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in Section 145 of the DGCL, nor an actual determination by the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article IX or otherwise shall be on the corporation.

9.5 NON-EXCLUSIVITY OF RIGHTS.

The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the

certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.6 INSURANCE.

The corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.7 AMENDMENT OR REPEAL.

The rights to indemnification and advancement of expenses provided by this Article IX shall not be deemed exclusive of any other rights which any person may have or hereafter acquire under any law, provision of the certificate of incorporation or these bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The rights conferred upon indemnitees in this Article IX shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer of the corporation and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of the foregoing provisions of this Article IX that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any Proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, modification or repeal.

9.8 SUBROGATION.

In the event of payment under this Article IX, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote thereon. However, the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

ARTICLE XI – FORUM SELECTION

11.1 FORUM SELECTION GENERALLY.

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for any current or former stockholder (including a current or former beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim that is based upon a violation of a duty owed by any current or former director, officer, employee, or stockholder of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim against the corporation or its current or former directors, officers, employees, or stockholders arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws, (iv) any action asserting a claim against the corporation or its current or former directors, officers, employees, or stockholders governed by the internal affairs doctrine, or (v) any action in the right of the corporation asserting a claim as to which the DGCL confers jurisdiction upon the Court of Chancery, shall be the Court of Chancery of the State of Delaware (or, if such court does not have, or declines to accept, jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware). To the fullest extent permitted by law, if any action the subject matter of which is within the scope of this Section 11.1 is filed in a court other than the Court of Chancery of the State of Delaware (or, if such court does not have, or declines to accept, jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware) (a “foreign action”) by or on behalf of any current or former stockholder (including a current or former beneficial owner), such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the Court of Chancery (or the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, as applicable) in connection with any action brought in any such court to enforce this Section 11.1 and (y) having service of process made upon such stockholder in any such action by service upon such stockholder’s counsel in the foreign action as agent for such stockholder.

11.2 SECURITIES ACT FORUM SELECTION.

Unless the corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

11.3 CONSENT.

For the avoidance of doubt, this ARTICLE XI is intended to benefit and may be enforced by the corporation, the officers and directors of the corporation, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the corporation shall be deemed to have notice of and consented to the provisions of this this ARTICLE XI.

ATRICURE, INC.
CERTIFICATE OF AMENDMENT OF BYLAWS

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary or Assistant Secretary of AtriCure, Inc., a Delaware corporation and that the foregoing bylaws, comprising 21 pages, were amended and restated effective July 30, 2024 by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this 30th day of July, 2024.

J. Mark Lenter
Secretary

Exhibit 3.3

FOURTH AMENDED AND RESTATED BYLAWS OF
ATRICURE, INC.
(a Delaware corporation)

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FOURTH AMENDED AND RESTATED
BYLAWS OF ATRICURE, INC.

ARTICLE I - CORPORATE OFFICES

1.1 REGISTERED OFFICE.

The registered office of AtriCure, Inc. (the “corporation”) shall be fixed in the corporation’s certificate of incorporation, as the same may be amended from time to time (the “certificate of incorporation”).

1.2 OTHER OFFICES.

The corporation’s ~~Board of Directors (the “Board”)~~ may at any time establish other offices at any place or places where the corporation is qualified to do business.

ARTICLE II - MEETINGS OF STOCKHOLDERS

2.1 PLACE OF MEETINGS.

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

2.2 ANNUAL MEETING.

The annual meeting of stockholders shall be held each year on a date and time designated by the Board (or its designee). At the annual meeting, directors shall be elected and any other proper business may be transacted.

2.3 SPECIAL MEETING.

A special meeting of stockholders may be called at any time by the Board, chairperson of the Board, chief executive officer or president (in the absence of a chief executive officer), but such special meetings may not be called by any other person or persons.

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

2.4 ADVANCE NOTICE PROCEDURES; NOTICE OF STOCKHOLDERS' MEETINGS.

(i) At an annual meeting of 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, (B) otherwise properly brought before the meeting by or at the direction of the Board, 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, and not more than one hundred fifty (150) calendar days, before the one year anniversary of the date on which the corporation first mailed its proxy statement 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 of the prior year's meeting, notice by the stockholder to be timely must be so received not later than the close of business on the later of one hundred fifty (150) calendar days in advance of such annual meeting and ten (10) calendar days following the date on which public announcement of the date of the meeting is first made. A stockholder's notice to the secretary shall set forth as to each matter the stockholder proposes to bring before the annual meeting: (a) 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, (b) the name and address, as they appear on the corporation's books, of the stockholder proposing such business, (c) the class and number of shares of the corporation that are beneficially owned by the stockholder, (d) any material interest of the stockholder in such business, and (e) 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 "1934 Act"), in his capacity as a proponent to a stockholder proposal. Notwithstanding the foregoing, in order to include information with respect to a stockholder proposal in the proxy statement and form of proxy for a stockholder's meeting, stockholders must provide notice as required by the regulations promulgated under the 1934 Act. 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 (i). 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 (i), and, if he should so determine, he shall so declare at the meeting that any such business not properly brought before the meeting shall not be transacted.

(ii) Only persons who are nominated in accordance with the procedures set forth in this paragraph (ii) shall be eligible for election as directors. Nominations of persons for election to the Board may be made at a meeting of stockholders by or at the direction of the Board 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 (ii). Such nominations, other than those made by or at the direction of the Board, shall be made pursuant to timely notice in writing to the secretary of the corporation in accordance with the provisions of paragraph (i) of this Section 2.4. Such stockholder's notice shall set forth (a) 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 that 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 elections of directors, or is otherwise required, in each case pursuant to Regulation 14A under the 1934 Act (including without limitation such person's written consent to being named in the proxy statement, if any, as a nominee and to serving as a director if elected); and (b) as to such stockholder giving notice, the information required to be provided pursuant to paragraph (i) of this Section 2.4. At the request of the Board, 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 (ii). 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 if he should so determine, he shall so declare at the meeting, and the defective nomination shall be disregarded.

These provisions shall not prevent the consideration and approval or disapproval at an annual meeting of reports of officers, directors and committees of the Board, but in connection therewith no new business shall be acted upon at any such meeting unless stated, filed and received as herein provided. Notwithstanding anything in these bylaws to the contrary, no business brought before a meeting by a stockholder shall be conducted at an annual meeting except in accordance with procedures set forth in this Section 2.4.

All notices of meetings of stockholders shall be sent or otherwise given in accordance with either Section 2.5 or Section 8.1 of these bylaws not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise required by applicable law. The notice shall specify the place, if any, date and hour of the meeting, the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called.

2.5 MANNER OF GIVING NOTICE; AFFIDAVIT OF NOTICE.

Notice of any meeting of stockholders shall be deemed given: as provided in Section 232 of the DGCL.

(i) — ~~if mailed, when deposited in the United States mail, postage prepaid, directed to the stockholder at his or her address as it appears on the corporation's records; or~~

~~(ii) if electronically transmitted, as provided in Section 8.1 of these bylaws.~~

An affidavit of the secretary or an assistant secretary of the corporation or of the transfer agent or any other agent of the corporation that the notice has been given ~~by mail or by a form of~~

~~electronic transmission, as applicable~~, shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

2.6 QUORUM.

Except as otherwise required by law or the certificate of incorporation, the holders of a majority of the voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum for the transaction of business at all meetings of the stockholders. If, however, such quorum is not present or represented by proxy at any meeting of stockholders, then either (i) the chairperson of the meeting, or (ii) the stockholders entitled to vote at the meeting, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, ~~without notice other than announcement at the meeting~~, until a quorum is present or represented. At such adjourned meeting at which a quorum is present or represented, any business may be transacted that might have been transacted at the meeting as originally noticed.

2.7 ADJOURNED MEETING; NOTICE.

When a meeting is adjourned to another time or place (if any) (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), unless these bylaws otherwise require, notice need not be given of the adjourned meeting if the time, place (if any) thereof, and the means of remote communications (if any) by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken, displayed, during the time proxy holders scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or set forth in the notice of the meeting given in accordance with Section 222 of the DGCL. 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, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 213(a) of the DGCL, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

2.8 CONDUCT OF BUSINESS.

~~Each of the chairperson of the meeting and the Board~~ Such person as the Board may have designated or, in the absence of such a person, the chief executive officer, or in his or her absence, the president, shall call to order any meeting of the stockholders and act as chairperson of the meeting. In the absence of the secretary of the corporation, the secretary of the meeting shall be such person as the chairperson of the meeting appoints. The Board may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the chairperson of the meeting shall have the authority to adopt and enforce rules and regulations providing for the orderly conduct of the meeting and the safety of those in attendance, ~~including~~

~~without limitation as, in the judgement of the chairperson of the meeting, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board or by the chairperson of the meeting, may include, without limitation, the authority to: (i) determine when the polls will open and close on items submitted for stockholder action and matters which are to be voted on by ballot (if any); (ii) establish an agenda or order of business for the meeting and fix the time allotted for consideration of each agenda item and for questions and comments by persons in attendance; (iii) adopt rules for determining who may pose questions and comments during the meeting; (iv) adopt rules for determining who may attend the meeting; and or participate in the meeting, including, without limitation, so limiting such attendees or participants to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies, qualified representatives (including rules around who qualifies as such) and such other persons as the chairperson of the meeting shall permit; (v) adopt procedures, if any, requiring attendees to provide the corporation advance notice of their intent to attend the meeting; (vi) adopt rules and procedures for maintaining order at the meeting and the safety of those present; and (vii) adopt restrictions on entry to the meeting after the time fixed for the commencement thereof.~~ The chairperson may adjourn or recess any meeting of stockholders, whether or not there is a quorum present at the meeting, and notice of such adjournment or recess need be given only if required by law.

2.9 VOTING.

The stockholders entitled to vote at any meeting of stockholders shall be determined in accordance with the provisions of Section 2.11 of these bylaws, subject to Section 217 (relating to voting rights of fiduciaries, pledgors and joint owners of stock) and Section 218 (relating to voting trusts and other voting agreements) of the DGCL.

Except as may be otherwise provided in the certificate of incorporation or these bylaws, each stockholder shall be entitled to one vote for each share of capital stock held by such stockholder. The stockholders of the corporation shall not have the right to cumulate their votes for the election of directors of the corporation.

2.10 STOCKHOLDER ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Subject to the rights of the holders of the shares of any series of Preferred Stock or any other class ~~of stock~~ or series ~~thereof of stock of the corporation~~ having a preference over the Common Stock as dividend or upon liquidation, ~~and except as otherwise provided in the certificate of incorporation~~, any action required or permitted to be taken by the stockholders of the corporation must be effected at a duly called annual or special meeting of stockholders of the corporation and may not be effected by any consent in writing by such stockholders.

2.11 RECORD DATE FOR STOCKHOLDER NOTICE; VOTING; GIVING CONSENTS.

(i) In order that the corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may, except as otherwise required by law, fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so

fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and 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.

(ii) A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance with the foregoing provisions of this Section 2.11 at the adjourned meeting.

(iii) 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 may fix a record date, which such record date shall not precede the date upon which the resolution fixing the record date is adopted, and which such record date shall be not more than 60 days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

2.12 PROXIES.

Each stockholder entitled to vote at a meeting of stockholders may authorize another person or persons to act for such stockholder by proxy authorized ~~by an instrument in writing or by a transmission permitted by law filed and~~ in accordance with ~~the procedure established for the meeting~~[Section 212 of the DGCL](#), but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. The revocability of a proxy that states on its face that it is irrevocable shall be governed by the provisions of Section 212 of the DGCL. [Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use of the Board.](#)

A written proxy may be in the form of a telegram, cablegram, or other means of electronic transmission which sets forth or is submitted with information from which it can be determined that the telegram, cablegram, or other means of electronic transmission was authorized by the person.

2.13 LIST OF STOCKHOLDERS ENTITLED TO VOTE.

The ~~officer who has charge of the stock ledger of the~~ corporation shall prepare ~~and make, at least ten~~ [no later than the tenth \(10\)](#)~~10th~~ days ~~day~~ before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order,

and showing the address of each stockholder and the number of shares registered in the name of each stockholder, provided, however if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date. The corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting for a period of at least ten (10) days prior to ending on the day before the meeting date; (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the corporation's principal executive office. In the event that the corporation determines to make the list available on an electronic network, the corporation may take reasonable steps to ensure that such information is available only to stockholders of the corporation. ~~If the meeting is to be held at a place, then the list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.~~

2.14 INSPECTORS OF ELECTION.

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

- (i) determine ascertain the number of shares outstanding and the voting power of each, and determine the number of shares represented at the meeting, the existence of a quorum, and validity of proxies and ballots;
- (ii) count all votes and ballots;
- (iii) determine and retain for a reasonable period of time a record of all the disposition of any challenges made to any determination by the inspector(s); and
- (iv) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

The inspectors of election Each inspector before entering upon the discharge of the duties of inspector, shall take and sign an oath to faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. If there are three (3) inspectors of election, the decision, act or certificate of a majority is effective in all respects as the decision, act or certificate of all. Any report or certificate made by the inspectors of election is prima facie evidence of the facts stated therein.

2.15 DELIVERY TO THE CORPORATION.

Irrespective of Section 116 of the DGCL, whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation, letter or other document or agreement), such document or information must be in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

ARTICLE III - DIRECTORS

3.1 POWERS.

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

3.2 NUMBER OF DIRECTORS.

The authorized number of directors shall be determined from time to time by resolution of the Board, provided the Board shall consist of not less than six (6) nor more than twelve (12) members. No reduction of the authorized number of directors shall have the effect of removing any director before that director's term of office expires.

3.3 ELECTION, ~~QUALIFICATION~~ AND TERM OF OFFICE OF DIRECTORS.

Except as provided in Section 3.4 of these bylaws, each director, including a director elected to fill a vacancy, shall hold office until the next annual meeting and until such director's successor is elected and qualified or until such director's earlier death, resignation or removal. Directors need not be stockholders unless so required by the certificate of incorporation or these bylaws. ~~The certificate of incorporation or these bylaws may prescribe other qualifications for directors.~~

(i) The corporation has established a majority voting standard in uncontested elections of directors. In an uncontested election of directors (i.e., an election where ~~as of the tenth (10th) day preceding the date the corporation first gives its notice of meeting for such meeting to stockholders~~, the number of nominees does not exceed the number of directors to be elected at the meeting), each director shall be elected by ~~the vote of the~~ ~~a~~ majority of the votes cast with respect to that director's election at any meeting for the election of directors at which a quorum is present. In any election of directors that is not an uncontested election, directors shall be elected by a plurality of the votes cast. For purposes of this Section 3.3, "a majority of the votes cast" means that the number of shares voted "for" a director must exceed the number of votes cast "against" that director's election. "Abstentions" and "broker non-votes" shall not be counted as votes cast with respect to a director's election.

(ii) Following certification of the stockholder vote in an uncontested election, any incumbent director who received a greater number of votes "against" his or her election than votes "for" his or her election shall promptly tender his or her resignation, contingent upon

acceptance of such resignation by the Board in accordance with this Section 3.3, to the ~~chairman chairperson~~ of the Board. The ~~chairman chairperson~~ of the Board shall inform the ~~chairman chairperson~~ of the Nominating and Corporate Governance Committee of such tender of resignation and the Nominating and Corporate Governance Committee shall promptly consider such resignation and recommend to the Board whether to accept the tendered resignation or reject it. In deciding upon its recommendation, the Nominating and Corporate Governance Committee shall consider all relevant factors including, without limitation, the length of service and qualifications of the director who has tendered his or her resignation and the director's contributions to the corporation and the Board.

(iii) The Board shall act on the Nominating and Corporate Governance Committee's recommendation no later than ninety (90) days following certification of the stockholder vote. The Board shall consider the factors considered by the Nominating and Corporate Governance Committee and such additional information and factors the Board deems relevant. The corporation shall promptly publicly disclose the decision of the Board and, if applicable, the reasons for rejecting the tendered resignation, in a Report on Form 8-K filed with the Securities and Exchange Commission.

(iv) If a director's resignation is accepted by the Board, the Nominating and Corporate Governance Committee shall recommend to the Board whether to fill the vacancy created by such resignation or to reduce the size of the Board. ~~Any director who tenders his or her resignation as provided above shall not participate in the Nominating and Corporate Governance Committee's or the Board's consideration of whether or not to accept his or her tendered resignation.~~

(v) ~~If a majority of the members of the Nominating and Corporate Governance Committee are required to tender their resignations as described above, the directors whom the board of directors has affirmatively determined to be independent in accordance with applicable stock exchange listing standards and who were not required to tender their resignations shall appoint a special committee of the Board to consider the tendered resignations and whether to accept or reject them. If all eligible independent directors described immediately above are required to tender their resignations in accordance with this Section 3.3, the Board shall consider each tendered resignation without the participation of the director whose resignation is under consideration, and determine to accept or reject the resignation.~~

3.4 QUALIFICATIONS.

(i) ~~For a person to be qualified to stand for election or re-election as a director, such person shall (1) in the case of an annual meeting of stockholders, no later than the one hundred twentieth (120th) day before the one year anniversary of the date on which the corporation first mailed its proxy statement to stockholders in connection with the previous year's annual meeting of stockholders, or, 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 of the prior year's meeting, no later than the one hundred fiftieth (150th) day prior to such annual meeting or the tenth (10th) day following the date on which public announcement of the date of the meeting is first made by the corporation and (2) in the case of a special meeting of stockholders at which directors are to be elected pursuant to the corporation's notice of meeting, no later than the one~~

hundred fiftieth (150th) day prior to such special meeting or the tenth (10th) day following the date on which public announcement of the date of the special meeting is first made by the corporation, deliver, or shall cause to be delivered, to the secretary of the corporation the following:

- (a) such person's written consent to being named in a proxy statement relating to the meeting of stockholders at which directors are to be elected and to serve if elected, and
- (b) a completed and signed written questionnaire with respect to the background, qualifications, stock ownership and independence of such person (the form of which shall be provided by the secretary within five (5) business days following a written request therefor).
- (ii) In addition to satisfying the qualifications set forth in the preceding paragraph, in the case of a person nominated for election or re-election as a director by a stockholder in accordance with the procedures set forth in the certificate of incorporation and these bylaws (a "Stockholder Nominee"), such Stockholder Nominee shall not be qualified to stand for election or re-election as a director unless the stockholder submitting such nomination delivers, within the time periods set forth in Section 3.4(i) of these bylaws, a written representation:

 - (a) as to whether or not such stockholder, any beneficial owner on whose behalf such Stockholder Nominee's nomination is made or any affiliate who controls either of the foregoing stockholder or beneficial owner, directly or indirectly (each a "Proponent"), will or is part of a group that will solicit proxies in support of any proposed nominee in accordance with Rule 14a-19 ("Rule 14a-19") promulgated under the Securities Exchange Act of 1934, as amended, and
 - (b) that, if a Proponent has represented that it (or a group of which such Proponent is a part) will conduct such a solicitation, such Proponent will (A) notify the corporation if such Proponent (or a group of which such Proponent is a part) no longer intends to solicit proxies in accordance with Rule 14a-19, which notice shall be delivered in writing to the secretary at the principal executive offices of the corporation no later than two (2) business days after the occurrence of such change in intent, and (B) promptly (and in any event no more than two (2) business days) after such Proponent (or a group of which such Proponent is a part) has solicited proxies in accordance with Rule 14a-19, provide the corporation with reasonable evidence, which may take the form of a statement and documentation from a proxy solicitor, demonstrating that the necessary steps have been taken to solicit holders of the corporation's stock in accordance with Rule 14a-19; provided, however, that such Stockholder Nominee shall be disqualified from standing for election or re-election as a director if a Proponent acts contrary to any representation required by clause (a) or (b) of this Section 3.4(ii).
- (iii) The certificate of incorporation or these bylaws may prescribe other qualifications for directors.

3.5 ~~3.4~~RESIGNATION AND VACANCIES.

Any director may resign at any time upon notice given in writing or by electronic transmission to the corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. When one or more directors so resigns and the resignation is effective at a future date, a majority of the directors then in office, including those who have so resigned, shall have the power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each director so chosen shall hold office as provided in this section in the filling of other vacancies. Unless otherwise provided in the certificate of incorporation or these bylaws, vacancies occurring on the Board for any reason and newly created directorships resulting from an increase in the authorized number of directors may be filled only by vote of a majority of the remaining members of the Board, although less than a quorum. A person so elected by the Board to fill a vacancy or newly created directorship shall hold office until the next election and until his or her successor shall have been duly elected and qualified.

If at any time, by reason of death or resignation or other cause, the corporation should have no directors in office, then any officer or any stockholder or an executor, administrator, trustee or guardian of a stockholder, or other fiduciary entrusted with like responsibility for the person or estate of a stockholder, may call a special meeting of stockholders in accordance with the provisions of the certificate of incorporation or these bylaws, or may apply to the Court of Chancery for a decree summarily ordering an election as provided in Section 211 of the DGCL.

3.6 ~~3.5~~PLACE OF MEETINGS; MEETINGS BY TELEPHONE.

The Board may hold meetings, both regular and special, at such places (if any) either within or outside the State of Delaware.

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

3.7 ~~3.6~~REGULAR MEETINGS.

Regular meetings of the Board may be held without notice at such time and at such place (if any) as shall from time to time be determined by the Board.

3.8 ~~3.7~~SPECIAL MEETINGS; NOTICE.

Special meetings of the Board for any purpose or purposes may be called at any time by the chairperson of the Board, the chief executive officer, the president, the secretary or a majority of the authorized number of directors. The date, time and place, if any, of the meeting shall be determined by the person or persons who called the meeting in accordance with the preceding sentence.

Notice of the time and place (if any) of special meetings shall be:

- (i) delivered personally by hand or by telephone;
- (ii) sent by United States first-class mail, postage prepaid;
- (iii) sent by facsimile; or
- (iv) sent by electronic mail,

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

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

3.9 ~~3.8~~ QUORUM.

At all meetings of the Board, a majority of the authorized number of directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at any meeting at which a quorum is present shall be the act of the Board, except as may be otherwise specifically provided by statute, the certificate of incorporation or these bylaws. If a quorum is not present at any meeting of the Board, then the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

3.10 ~~3.9~~ BOARD ACTION BY WRITTEN CONSENT WITHOUT A MEETING.

Unless otherwise restricted by the certificate of incorporation or these bylaws, any action required or permitted to be taken at any meeting of the Board, or of any committee thereof, may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission ~~and~~ . After an action is taken, the writing or writings or electronic transmission or transmissions ~~are~~ shall be filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty (60) days after such instruction is given or such provision is made, and such consent shall be deemed to have been given for purposes of this section at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

3.11 ~~3.10~~FEES AND COMPENSATION OF DIRECTORS.

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

ARTICLE IV - COMMITTEES

4.1 COMMITTEES OF DIRECTORS.

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

4.2 COMMITTEE MINUTES.

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

4.3 MEETINGS AND ACTION OF COMMITTEES.

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

- (i) Section 3.5 (place of meetings and meetings by telephone);
- (ii) Section 3.6 (regular meetings);
- (iii) Section 3.7 (special meetings and notice);
- (iv) Section 3.8 (quorum);
- (v) Section 7.12 (waiver of notice); and
- (vi) Section 3.9 (action without a meeting)

with such changes in the context of those bylaws as are necessary to substitute the committee and its members for the Board and its members. However:

- (x) the time of regular meetings of committees may be determined either by resolution of the Board or by resolution of the committee;
- (y) special meetings of committees may also be called by resolution of the Board; and
- (z) ~~notice of special meetings of committees shall also be given to all alternate members, who shall have the right to attend all meetings of the committee. The~~ the Board may adopt rules for the government of any committee not inconsistent with the provisions of these bylaws.

ARTICLE V - OFFICERS

5.1 OFFICERS.

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

5.2 APPOINTMENT OF OFFICERS.

The Board shall appoint the officers of the corporation, except such officers as may be appointed in accordance with the provisions of Section 5.3 or Section 5.5 of these bylaws.

5.3 SUBORDINATE OFFICERS.

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

5.4 REMOVAL AND RESIGNATION OF OFFICERS.

Any officer may be removed, either with or without cause, by ~~an affirmative vote of the majority of the Board at any regular or special meeting of~~ the Board or, except in the case of an officer chosen by the Board, by any officer upon whom such power of removal may be conferred by the Board.

Any officer may resign at any time by giving written notice or electronic transmission to the corporation. Any resignation shall take effect at the date of the receipt of that notice or at any later time specified in that notice. Unless otherwise specified in the notice of resignation, the

acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the corporation under any contract to which the officer is a party.

5.5 VACANCIES IN OFFICES.

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

5.6 REPRESENTATION OF ~~SHARES SECURITIES~~ OF OTHER ~~CORPORATIONS~~ ENTITIES.

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

5.7 AUTHORITY AND DUTIES OF OFFICERS.

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

ARTICLE VI - RESERVED

Reserved.

ARTICLE VII - GENERAL MATTERS

7.1 EXECUTION OF CORPORATE CONTRACTS AND INSTRUMENTS.

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

7.2 STOCK CERTIFICATES; PARTLY PAID SHARES.

The shares of the corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of its stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the corporation. Notwithstanding the adoption of such a resolution by the Board, every holder of stock represented by certificates ~~and, upon request, every holder of uncertificated shares~~ shall be entitled to have a certificate signed by, or in the name of the corporation by any two (2) authorized officers of the corporation (including, without limitation, the chairperson or vice-chairperson of the Board, or the president or vice-president, and by the treasurer or an assistant treasurer, or the secretary or an assistant secretary ~~of such corporation~~) representing the number of shares registered in certificate form. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the corporation with the same effect as if he or she were such officer, transfer agent or registrar at the date of issue.

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

7.3 SPECIAL DESIGNATION ON CERTIFICATES.

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

7.4 LOST CERTIFICATES.

Except as provided in this Section 7.4, no new certificates for shares shall be issued to replace a previously issued certificate unless the latter is surrendered to the corporation and cancelled at the same time. The corporation may issue a new certificate of stock or

uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

7.5 CONSTRUCTION; DEFINITIONS.

Unless the context requires otherwise, the general provisions, rules of construction, and definitions in the DGCL shall govern the construction of these bylaws. Without limiting the generality of this provision, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both a corporation and a natural person. If the certificate of incorporation provides for more or less than one (1) vote for any share, on any matter, every reference in these bylaws to a majority or other proportion of stock, voting stock or shares shall refer to such majority or other proportion of the votes of such stock, voting stock or shares.

7.6 DIVIDENDS.

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

The Board may set apart out of any of the funds of the corporation available for dividends a reserve or reserves for any proper purpose and may abolish any such reserve.

7.7 FISCAL YEAR.

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

7.8 SEAL.

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

7.9 TRANSFER OF STOCK.

Upon surrender to the corporation or the transfer agent of the corporation of a certificate for shares duly endorsed or accompanied by proper evidence of succession, assignation 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 in its books.

7.10 STOCK TRANSFER AGREEMENTS.

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

7.11 REGISTERED STOCKHOLDERS.

The corporation:

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

7.12 WAIVER OF NOTICE.

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

ARTICLE VIII — NOTICE BY ELECTRONIC TRANSMISSION

8.1 NOTICE BY ELECTRONIC TRANSMISSION.

(i) ~~Without limiting the manner by which notice otherwise may be given effectively to stockholders pursuant to the DGCL, the certificate of incorporation or these bylaws, any notice to stockholders given by the corporation under any provision of the DGCL, the certificate of incorporation or these bylaws shall be effective if given by a form of electronic transmission consented to by the stockholder to whom the notice is given. Any such consent shall be revocable by the stockholder by written notice to the corporation. Any such consent shall be deemed revoked if:~~

(a) ~~the corporation is unable to deliver by electronic transmission two consecutive notices given by the corporation in accordance with such consent; and~~

~~(b) such inability becomes known to the secretary or an assistant secretary of the corporation or to the transfer agent, or other person responsible for the giving of notice.~~

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

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

~~(a) if by facsimile telecommunication, when directed to a number at which the stockholder has consented to receive notice;~~

~~(b) if by electronic mail, when directed to an electronic mail address at which the stockholder has consented to receive notice;~~

~~(c) if by a posting on an electronic network together with separate notice to the stockholder of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; and~~

~~(d) if by any other form of electronic transmission, when directed to the stockholder.~~

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

8.2 DEFINITION OF ELECTRONIC TRANSMISSION.

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

8.3 INAPPLICABILITY.

~~Notice by a form of electronic transmission shall not apply to Sections 164, 296, 311, 312 or 324 of the DGCL.~~

ARTICLE VIII - RESERVED.

Reserved.

ARTICLE IX - INDEMNIFICATION

9.1 INDEMNIFICATION OF DIRECTORS AND OFFICERS.

The corporation shall indemnify and hold harmless, to the fullest extent permitted by the DGCL as it presently exists or may hereafter be amended (but, in the case of any such amendment, any current or former director or officer of the corporation only to the extent that

such amendment permits the corporation to provide broader indemnification rights than such law permitted the corporation to provide prior to such amendment), any person who was or is made or is threatened to be made a party or is otherwise involved in any action, suit ~~or, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether of a~~ civil, criminal, administrative ~~or, legislative, investigative or other nature~~ (a “Proceeding”) by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director, ~~or officer, employee or agent~~ of the corporation or ~~while serving as a director or officer of the corporation, is~~ or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, ~~or other~~ enterprise or non-profit entity, including service with respect to employee benefit plans (an “indemnitee”), whether the basis of such Proceeding is alleged action in an official capacity as a director or officer of the corporation or in any other capacity while serving as a director or officer of the corporation, against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such ~~person~~ indemnitee in connection with any such Proceeding. Notwithstanding the previous sentence, the corporation shall not be required to indemnify an indemnitee in connection with a Proceeding (or part thereof) initiated by such ~~person only if indemnitee unless (i) the Proceeding (or part thereof) was authorized by the Board, except as provided in Section 9.4 of this Article IX with respect to proceedings to enforce rights to advancement or indemnification or (ii) the Proceeding (or part thereof) is initiated to enforce rights to indemnification or advancement of expenses as provided under Section 9.4 below or is a compulsory counterclaim brought by such indemnitee. Any reference to an officer of the corporation in this Article IX shall be deemed to refer exclusively to the chief executive officer, president, chief financial officer, secretary, treasurer, and any other officer of the corporation elected or appointed as such by the Board pursuant to Section 5.2 of these bylaws.~~

9.2 INDEMNIFICATION OF OTHERS.

The corporation shall have the power to indemnify and hold harmless and advance expenses to, to the extent and in the manner permitted by applicable law as it presently exists or may hereafter be amended, any employee or agent of the corporation who was or is made or is threatened to be made a party or is otherwise involved in any Proceeding by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was an employee or agent of the corporation or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, ~~or other~~ enterprise ~~or non-profit entity~~, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys’ fees, judgments, fines, ERISA excise taxes or penalties and amounts paid in settlement) reasonably incurred by such person in connection with any such Proceeding.

9.3 PREPAYMENT OF EXPENSES.

The corporation shall pay the expenses incurred by or on behalf of an indemnitee, and may pay the expenses incurred by any current or former employee or agent of the corporation, in defending any Proceeding in advance of its final disposition; provided, however, that the payment of expenses incurred by ~~a person or on behalf of an indemnitee~~ in advance of the final

disposition of the Proceeding shall be made only upon receipt of an undertaking by the person indemnitee to repay all amounts advanced if it should be ultimately determined by final judicial decision from which there is no further right of appeal that the person an indemnitee is not entitled to be indemnified under this Article IX or otherwise.

9.4 DETERMINATION; CLAIM.

If a claim for indemnification ~~or payment of expenses~~ under this Article IX is not paid to an indemnitee in full within sixty (60) days, ~~, or if a claim for any advancement of expenses under this Article IX is not paid in full within twenty (20) days~~, after a written claim therefor has been received by the corporation, the indemnitee may ~~file suit to recover the unpaid amount of such claim at any time thereafter file suit against the corporation in the Delaware Court of Chancery seeking an adjudication of entitlement to such indemnification or advancement of expenses~~. To the fullest extent permitted by law, if successful in whole or in part in any such suit, or in a suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall also be entitled to be paid the expense of prosecuting or defending such suit. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145 of the DGCL. In any suit brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145 of the DGCL. Neither the failure of the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in Section 145 of the DGCL, nor an actual determination by the corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article IX or otherwise shall be on the corporation.

9.5 NON-EXCLUSIVITY OF RIGHTS.

The rights conferred on any person by this Article IX shall not be exclusive of any other rights which such person may have or hereafter acquire under any statute, provision of the certificate of incorporation, these bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

9.6 INSURANCE.

The corporation may purchase and maintain insurance, at its expense, to protect itself and any person who is or was a director, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss asserted against him or her and incurred by him or her in any such capacity, whether or not the corporation would have the power to indemnify him or her against such liability under the provisions of the DGCL.

9.7 OTHER INDEMNIFICATION.

~~The corporation's obligation, if any, to indemnify any person who is or was serving at its request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust, enterprise or non-profit entity shall be reduced by any amount such person may collect as indemnification from such other corporation, partnership, joint venture, trust, enterprise or non-profit enterprise.~~

9.7 9.8 AMENDMENT OR REPEAL.

~~The provisions of this Article IX shall constitute a contract between the corporation, on the one hand, and, on the other hand, each individual who serves or has served as a director or officer of the corporation (whether before or after the adoption of these bylaws), in consideration of such person's performance of such services, and pursuant to this Article IX the corporation intends to be legally bound to each such current or former. The rights to indemnification and advancement of expenses provided by this Article IX shall not be deemed exclusive of any other rights which any person may have or hereafter acquire under any law, provision of director or officer of the corporation. With respect to current and former directors and officers of the corporation, the rights conferred under this Article IX are present contractual rights and such rights are fully vested, and shall be deemed to have vested fully, immediately upon adoption of these bylaws and such rights shall inure to the benefit of such person's heirs, executors and administrators. With respect to any directors or officers of the corporation who commence service following adoption of these bylaws, the rights conferred under this provision shall be present contractual rights and such rights shall fully vest, and be deemed to have vested fully, immediately upon such director or officer commencing service as a director or officer of the corporation. Any repeal or modification of the foregoing provisions of this Article IX shall not adversely affect any right or protection (i) hereunder of any person in respect of any act or omission occurring prior to the time of such repeal or modification, or (ii) under any agreement providing for indemnification or advancement of expenses to an officer or director of the corporation in effect prior to the time of such repeal or modification. the certificate of incorporation or these bylaws, agreement, vote of stockholders or disinterested directors or otherwise. The rights conferred upon indemnitees in this Article IX shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer of the corporation and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, repeal or modification of the foregoing provisions of this Article IX that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any Proceeding involving any occurrence or~~

alleged occurrence of any action or omission to act that took place prior to such amendment, modification or repeal.

9.8 SUBROGATION.

In the event of payment under this Article IX, the corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the indemnitee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the corporation effectively to bring suit to enforce such rights.

ARTICLE X - AMENDMENTS

These bylaws may be adopted, amended or repealed by the stockholders entitled to vote thereon. However, the corporation may, in its certificate of incorporation, confer the power to adopt, amend or repeal bylaws upon the directors. The fact that such power has been so conferred upon the directors shall not divest the stockholders of the power, nor limit their power to adopt, amend or repeal bylaws.

ARTICLE XI – FORUM SELECTION

11.1 FORUM SELECTION GENERALLY.

Unless the corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for any current or former stockholder (including a current or former beneficial owner) to bring (i) any derivative action or proceeding brought on behalf of the corporation, (ii) any action asserting a claim that is based upon a violation of a duty owed by any current or former director, officer, employee, or stockholder of the corporation to the corporation or the corporation's stockholders, (iii) any action asserting a claim against the corporation or its current or former directors, officers, employees, or stockholders arising pursuant to any provision of the DGCL or the certificate of incorporation or these bylaws, (iv) any action asserting a claim against the corporation or its current or former directors, officers, employees, or stockholders governed by the internal affairs doctrine, or (v) any action in the right of the corporation asserting a claim as to which the DGCL confers jurisdiction upon the Court of Chancery, shall be the Court of Chancery of the State of Delaware (or, if such court does not have, or declines to accept, jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware). To the fullest extent permitted by law, if any action the subject matter of which is within the scope of this Section 11.1 is filed in a court other than the Court of Chancery of the State of Delaware (or, if such court does not have, or declines to accept, jurisdiction, the Superior Court of the State of Delaware or the United States District Court for the District of Delaware) (a “foreign action”) by or on behalf of any current or former stockholder (including a current or former beneficial owner), such stockholder shall be deemed to have consented to (x) the personal jurisdiction of the Court of Chancery (or the Superior Court of the State of Delaware or the United States District Court for the District of Delaware, as applicable) in connection with any action brought in any such court to enforce this

Section 11.1 and (y) having service of process made upon such stockholder in any such action by service upon such stockholder's counsel in the foreign action as agent for such stockholder.

11.2 SECURITIES ACT FORUM SELECTION.

Unless the corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933, as amended.

11.3 CONSENT.

For the avoidance of doubt, this ARTICLE XI is intended to benefit and may be enforced by the corporation, the officers and directors of the corporation, the underwriters to any offering giving rise to such complaint, and any other professional entity whose profession gives authority to a statement made by that person or entity and who has prepared or certified any part of the documents underlying the offering. Any person or entity purchasing or otherwise acquiring or holding any interest in any security of the corporation shall be deemed to have notice of and consented to the provisions of this this ARTICLE XI.

ATRICURE, INC.

CERTIFICATE OF AMENDMENT OF BYLAWS

The undersigned hereby certifies that he is the duly elected, qualified, and acting Secretary or Assistant Secretary of AtriCure, Inc., a Delaware corporation and that the foregoing bylaws, comprising 1921 pages, were amended and restated ~~on February 15~~effective July 30, 20182024 by the corporation's board of directors.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand this ~~15th~~30th day of ~~February~~July20182024.



Secretary

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
 PURSUANT TO
 SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
 AS ADOPTED PURSUANT TO
 SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Michael H. Carrel, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AtriCure, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2024

By: /s/ Michael H. Carrel

Michael H. Carrel
 President and Chief Executive Officer
 (Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL ACCOUNTING AND FINANCIAL OFFICER
PURSUANT TO
SECTION 13(a) OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
AS ADOPTED PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Angela L. Wirick, certify that:

1. I have reviewed this quarterly report on Form 10-Q of AtriCure, Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a. designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b. designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c. evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d. disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - a. all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b. any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: July 31, 2024

By: /s/ Angela L. Wirick
 Angela L. Wirick
 Chief Financial Officer
 (Principal Accounting and Financial Officer)

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of AtriCure, Inc. (Company) on Form 10-Q for the quarter ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (Report), I, Michael H. Carrel, President and Chief Executive Officer and Principal Executive Officer of the Company, certify, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2024

By: /s/ Michael H. Carrel

Michael H. Carrel
President and Chief Executive Officer
(Principal Executive Officer)

A signed original of this written statement or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to AtriCure, Inc. and will be retained by AtriCure, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the report or as a separate disclosure document.

**CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the quarterly report of AtriCure, Inc. (Company) on Form 10-Q for the quarter ended June 30, 2024 as filed with the Securities and Exchange Commission on the date hereof (Report), I, Angela L. Wirick, Chief Financial Officer and Principal Accounting and Financial Officer of the Company, certify, pursuant to Rule 13a-14(b) and Section 1350 of Chapter 63 of Title 18 of the United States Code, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: July 31, 2024

By: /s/ Angela L. Wirick
Angela L. Wirick
Chief Financial Officer
(Principal Accounting and Financial Officer)

A signed original of this written statement or other document authenticating, acknowledging, or otherwise adopting the signature that appears in typed form within the electronic version of this written statement has been provided to AtriCure, Inc. and will be retained by AtriCure, Inc. and furnished to the Securities and Exchange Commission or its staff upon request.

The foregoing certification is being furnished solely pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (Subsections (a) and (b) of Section 1350, Chapter 63 of Title 18, United States Code) and is not being filed as part of the report or as a separate disclosure document.