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

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(D)
OF THE SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **December 13, 2021**

TERAWULF INC.

(Exact name of registrant as specified in its charter)

Delaware	**333-258335**	**85-1909475**
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

9 Federal Street
Easton, Maryland 21601
(Address of principal executive offices, including zip code)

(410) 770-9500
(Registrant's telephone number, including area code)

Telluride Holdco, Inc.
9 Federal Street
Easton, Maryland 21601
(Former name or former address, if changed since last report)

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

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

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

Title of each class	**Trading Symbol(s)**	**Name of each exchange on which registered**
Common stock, $0.001 par value per share	WULF	The Nasdaq Stock Market LLC

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

Emerging growth company ☐

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

INTRODUCTORY NOTE

On December 13, 2021 (the "***Closing Date***"), TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), a Delaware corporation ("***TeraWulf***"), completed the previously announced strategic business combination pursuant to the agreement and plan of merger, dated as of June 24, 2021 (as amended, supplemented or otherwise modified prior to the date hereof, the "***Merger Agreement***"), by and among TeraWulf, IKONICS Corporation, a Minnesota corporation ("***IKONICS***"), Telluride Merger Sub I, Inc., a Minnesota corporation ("***Merger Sub I***"), Telluride Merger Sub II, Inc., a Delaware corporation ("***Merger Sub II***"), and TeraCub Inc. (formerly known as TeraWulf Inc.), a Delaware corporation ("***TeraCub***"). Pursuant to the terms of the Merger Agreement, (i) Merger Sub I, a wholly-owned subsidiary of TeraWulf, which was a wholly-owned subsidiary of IKONICS, merged with and into IKONICS (the "***First Merger***"), with IKONICS surviving the First Merger, and (ii) Merger Sub II, a wholly-owned subsidiary of TeraWulf, merged with and into TeraCub (the "***Second Merger***" and, together with the First Merger, the "***Mergers***"), with TeraCub surviving the Second Merger. In connection with or as a result of the First Merger and the Second Merger, each of IKONICS and TeraCub became a wholly-owned subsidiary of TeraWulf. In addition, in connection with the consummation of the Mergers, "Telluride Holdco, Inc." was renamed "TeraWulf Inc.", and "TeraWulf Inc." was renamed "TeraCub Inc.".

This Current Report on Form 8-K establishes TeraWulf as the successor issuer to IKONICS pursuant to Rule 12g-3(c) under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***"). Pursuant to Rule 12g-3(d) under the Exchange Act, shares of the common stock, $0.001 par value per share, of TeraWulf (the "***TeraWulf Common Stock***") are deemed to be registered under Section 12(b) of the Exchange Act, and TeraWulf is subject to the informational requirements of the Exchange Act and the rules and regulations promulgated thereunder. TeraWulf hereby reports this succession in accordance with Rule 12g-3(f) under the Exchange Act. The description of the TeraWulf Common Stock set forth in the Registration Statement on Form S-4 (file no. 333-258335) (the "***Proxy Statement/Prospectus***") filed by TeraWulf with the Securities and Exchange Commission (the "***SEC***") on November 10, 2021 and declared effective by the SEC on November 12, 2021 is incorporated herein by reference.

Item 1.01 Entry into a Material Definitive Agreement.

Loan Agreement

As previously disclosed, on December 1, 2021 (the "***Loan Agreement Closing Date***"), TeraCub, as borrower, entered into a loan, guaranty and security agreement (the "***Loan Agreement***") with certain subsidiaries of TeraCub, as guarantors, the lenders party thereto from time to time and Wilmington Trust, National Association, as administrative agent and collateral agent. Upon the consummation of the Second Merger, TeraWulf assumed the obligations of TeraCub as the borrower under the Loan Agreement and the Term Loan (as defined below), and TeraCub became a subsidiary guarantor. The Loan Agreement provides TeraWulf with a $123.5 million senior secured term loan (the "***Term Loan***"), all of which was borrowed on December 2, 2021. The Term Loan has a scheduled maturity date of December 1, 2024. NovaWulf Digital Master Fund, L.P., an investment fund in which Mr. Paul B. Prager, TeraWulf's Chief Executive Officer, and Mr. Nazar Khan, TeraWulf's Chief Operating Officer and Chief Technology Officer, are minority investors, is one of the lenders under the Loan Agreement.

The obligations under the Loan Agreement and the Term Loan are guaranteed by TeraCub and each of TeraCub's subsidiaries as of the Loan Agreement Closing Date and any future subsidiaries of such subsidiary guarantors. The obligations under the Loan Agreement are secured by substantially all of the assets of TeraWulf, TeraCub and the subsidiary guarantors, but excluding the equity interests of Nautilus Cryptomine LLC, IKONICS and any future subsidiary of TeraWulf or TeraCub, in each case, that is not a subsidiary guarantor.

The Term Loan bears interest at a rate of 11.5% per annum and amortizes in quarterly installments equal to 12.5% of the original principal amount, commencing after the first anniversary of the Loan Agreement Closing Date. Any prepayment of the Term Loan made prior to the first anniversary of the Loan Agreement Closing Date will be subject to a make-whole premium equal to the present value of interest that would have been payable through the first anniversary of the Loan Agreement Closing Date plus 3.0% of the principal amount prepaid, and will be subject to a prepayment fee of 3.0% if prepaid on or after such first anniversary and prior to the second anniversary of the Loan Agreement Closing Date, and a prepayment fee of 2.0% if prepaid on or after such second anniversary and prior to the maturity date. Amounts prepaid or repaid under the Term Loan may not be reborrowed.

The Loan Agreement does not include any financial covenants. The Loan Agreement includes covenants that limit changes in business, liquidations and dissolutions, mergers and consolidations, incurrence of debt and liens, asset sales, affiliate transactions, investments, restricted payments of TeraWulf, violations of sanctions, anti-corruption and anti-money laundering laws and certain other legal and regulatory compliance matters, modifications of certain agreements and reduction in ownership of, and certain other changes regarding, Nautilus Cryptomine LLC.

The Loan Agreement contains events of default customary for financings of this type, including, among others, payment defaults, material inaccuracy of representations and warranties, covenant defaults, cross-defaults to certain indebtedness, certain events of bankruptcy or insolvency, certain events under the Employee Retirement Income Security Act of 1974, as amended, material judgments, actual or asserted failure of any loan document to be in full force and effect and changes of control. If such an event of default occurs, the lenders under the Loan Agreement would be entitled to take various actions, including, but not limited to, accelerating amounts outstanding under the Term Loan and exercising rights and remedies with respect to the guaranties and collateral.

The description of the Loan Agreement is qualified in its entirety by reference to the full text of the Loan Agreement, a copy of which will be filed with the next periodic report of TeraWulf.

Registration Rights Agreement

On the Closing Date, TeraWulf entered into a registration rights agreement (the "***Registration Rights Agreement***") with TeraCub and certain initial stockholders of TeraWulf, pursuant to which such initial stockholders of TeraWulf will have the right to require TeraWulf to have registered, in certain circumstances, the resale under the Securities Act of 1933, as amended, of their shares of the TeraWulf Common Stock constituting registrable securities (as defined in the Registration Rights Agreement), subject to certain conditions set forth in the Registration Rights Agreement. In addition, pursuant to the Registration Rights Agreement, such initial stockholders of TeraWulf were granted customary demand and piggyback registration rights, subject to blackout, cutback, lock-up, indemnification and other customary provisions.

The description of the Registration Rights Agreement is qualified in its entirety by reference to the full text of the Registration Rights Agreement, a copy of which will be filed with the next periodic report of TeraWulf.

Indemnification Agreement

Effective upon the completion of the Mergers, TeraWulf expects to enter into indemnification agreements (collectively, the "***Indemnification Agreements***") with each of TeraWulf's directors and executive officers. With specified exceptions, the Indemnification Agreements will provide for indemnification and advancements by TeraWulf of certain expenses and costs relating to claims, suits or proceedings arising from the director's or executive officer's service to TeraWulf or, at TeraWulf's request, service to other entities, as directors or executive officers, to the maximum extent permitted by applicable law.

The descriptions of the Indemnification Agreements are qualified in their entirety by reference to the full text of the Indemnification Agreements, a form of which will be filed with the next periodic report of TeraWulf.

Item 2.01. Completion of Acquisition or Disposition of Assets.

Pursuant to the terms of the Merger Agreement, in connection with the First Merger, each share of the common stock, $0.10 par value per share, of IKONICS (the "***IKONICS Common Stock***") issued and outstanding immediately prior to the effective time of the First Merger was automatically converted into and exchanged for (i) one validly issued, fully paid and non-assessable share of the TeraWulf Common Stock, (ii) one contractual contingent value right to be issued by TeraWulf in accordance with a contingent value rights agreement (iii) the right to receive $5.00 in cash, without interest. Each share of the TeraWulf Common Stock held by IKONICS issued and outstanding immediately prior to the effective time of the First Merger was automatically cancelled and ceased to exist as of the effective time of the First Merger, and each share of the common stock, $0.01 par value per share, of Merger Sub I issued and outstanding as of immediately prior to the effective time of the First Merger was automatically converted into and exchanged for one validly issued, fully paid and non-assessable share of common stock of the surviving IKONICS entity.

Immediately prior to the effective time of the Second Merger, each share of the Series A Convertible Preferred Stock, $0.001 par value per share, of TeraCub (the "***TeraCub Preferred Stock***") issued and outstanding was automatically converted into shares of the common stock, $0.001 par value per share, of TeraCub (the "***TeraCub Common Stock***"). At the effective time of the Second Merger, each share of the TeraCub Common Stock (including shares of the TeraCub Common Stock resulting from the conversion of the TeraCub Preferred Stock described above), issued and outstanding immediately prior to the effective time of the Second Merger (other than any dissenting shares of the TeraCub Common Stock) was automatically converted into the right to receive a number of validly issued, fully paid and non-assessable shares of the TeraWulf Common Stock equal to (x) a number of shares of the TeraWulf Common Stock that is equal to forty-nine times the number of shares of the TeraWulf Common Stock outstanding as of immediately following the effective time of the First Merger and immediately prior to the effective time of the Second Merger, divided by (y) the number of shares of the TeraCub Common Stock outstanding on a fully diluted basis as of immediately prior to the effective time of the Second Merger. Each share of the common stock, $0.01 par value per share, of Merger Sub II issued and outstanding immediately prior to the effective time of the Second Merger was automatically converted into and exchanged for one validly issued, fully paid and non-assessable share of common stock of the surviving TeraCub entity, and each share of the TeraCub Preferred Stock and the TeraCub Common Stock held by TeraCub or IKONICS and their respective affiliates in treasury as of the effective time of the Second Merger was canceled.

In addition, on December 1, 2021, the compensation committee of the board of directors of IKONICS approved the cancellation of all of the restricted stock units outstanding

under the IKONICS Corporation 2019 Equity Incentive Plan ("***IKONICS RSUs***") in exchange for cash payment equal to $33.82, net of applicable withholding taxes, for each share underlying the unvested portion of such IKONICS RSUs. Pursuant to the terms of the Merger Agreement, TeraCub funded the payments in exchange for cancellation of IKONICS RSUs in connection with the completion of the First Merger. Holders of IKONICS RSUs who did not participate in the cancellation arrangement received the same consideration as other holders of shares of the IKONICS Common Stock as a result of the First Merger.

Following the completion of the Mergers and after giving effect to the transactions contemplated by the Merger Agreement, there was an aggregate of 99,976,253 shares of the TeraWulf Common Stock issued and outstanding as of the date of this Current Report on Form 8-K. The shares of the TeraWulf Common Stock will begin trading on The Nasdaq Stock Market LLC under the ticker symbol "WULF" on December 14, 2021.

The description of the Merger Agreement contained herein does not purport to be complete and is qualified in its entirety by reference to the full text of the Merger Agreement, a copy of which is filed as Exhibits 2.1 through 2.5 hereto and incorporated herein by reference. This summary is not intended to modify or supplement any factual disclosures about TeraWulf, TeraCub or IKONICS and should not be relied upon as disclosure about TeraWulf, TeraCub or IKONICS without consideration of the periodic and current reports and statements that TeraWulf and IKONICS file with the SEC. The terms of the Merger Agreement govern the contractual rights and relationships between, and allocate risks among, the parties thereto in relation to the transactions contemplated thereby. In particular, the representations and warranties made by the parties to each other in the Merger Agreement reflect negotiations between, and are solely for the benefit of, the parties thereto and may be limited or modified by a variety of factors, including subsequent events, information included in public filings, disclosures made during negotiations, correspondence between the parties and disclosure schedules to the Merger Agreement. Accordingly, the representations and warranties may not describe the actual state of affairs at the date they were made or at any other time and should not be relied upon as statements of fact.

The information set forth in the Introductory Note to this Current Report on Form 8-K is incorporated herein by reference.

Item 2.03. Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.

The information set forth in the Introductory Note and Item 1.01 of this Current Report on Form 8-K pertaining to the Loan Agreement is incorporated herein by reference.

Item 3.01. Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

Prior to the completion of the Mergers, shares of the IKONICS Common Stock were registered pursuant to Section 12(b) of the Exchange Act and listed on The Nasdaq Stock Market LLC. In connection with the completion of the Mergers, the shares of the IKONICS Common Stock will be suspended from trading on The Nasdaq Stock Market LLC prior to the open of trading on December 14, 2021.

The information set forth in the Introductory Note and Item 2.01 of this Current Report on Form 8-K is incorporated herein by reference.

Item 3.03 Material Modification to Rights of Security Holders.

The information set forth in the Introductory Note and Items 2.01, 5.01 and 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

Item 5.01. Changes in Control of Registrant.

Prior to the effective time of the First Merger, TeraWulf was a wholly-owned subsidiary of IKONICS. Pursuant to the terms of the Merger Agreement, upon the effective time of the First Merger, a change in control of TeraWulf occurred and, following the completion of the Mergers, all shares of the TeraWulf Common Stock are held by the former holders of the TeraCub Common Stock and the former holders of the IKONICS Common Stock.

The information set forth in the Introductory Note and Items 2.01, 3.03, 5.02 and 5.03 of this Current Report on Form 8-K is incorporated herein by reference.

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

Appointment of Directors

In connection with, and effective immediately after the effective time of the Second Merger, each of the directors of TeraWulf as of immediately prior to the Second Merger resigned. In accordance with the terms of the Merger Agreement and effective immediately after the effective time of the Second Merger, each of Mr. Paul B. Prager, Mr. Nazar M. Khan, Mr. Walter E. Carter, Ms. Catherine J. Motz, Mr. Jason G. New, Mr. Steven T. Pincus and Ms. Lisa A. Prager were appointed to serve as directors on the board of directors of TeraWulf. In addition, effective immediately after the effective time of the Second Merger, Mr. Paul B. Prager was appointed as the chair of the board of directors of TeraWulf.

Committee Appointments

Effective immediately after the effective time of the Second Merger, the standing committees of the board of directors of TeraWulf consist of an audit committee (the "***Audit Committee***") and a compensation committee (the "***Compensation Committee***"). Each of the committees reports to the board of directors of TeraWulf.

Audit Committee

The primary purpose of the Audit Committee is to discharge the responsibilities of the board of directors of TeraWulf with respect to the accounting, financial and other reporting and internal control practices and to oversee TeraWulf's independent registered public accounting firm. Effective as of the consummation of the Second Merger, the board of directors of TeraWulf appointed Mr. Walter E. Carter, Ms. Catherine J. Motz and Mr. Steven T. Pincus to serve on the Audit Committee. Mr. Walter E. Carter serves as the chair of the Audit Committee. The board of directors of TeraWulf has determined that Mr. Walter E. Carter is an "audit committee financial expert" within the meaning of the SEC rules and regulations. In addition, the board of directors of TeraWulf has determined that each proposed member of the Audit Committee has the requisite financial expertise required under the applicable requirements of The Nasdaq Stock Market LLC.

Compensation Committee

The primary purpose of the Compensation Committee is to discharge the responsibilities of the board of directors of TeraWulf with respect to overseeing TeraWulf's compensation policies, plans and programs and reviewing and determining the compensation to be paid to TeraWulf's directors, executive officers and other senior management, as appropriate. Effective as of the consummation of the Second Merger, the board of directors of TeraWulf appointed Ms. Catherine J. Motz, Mr. Jason G. New, Mr. Paul B. Prager and Ms. Lisa A. Prager to serve on the Compensation Committee. Ms. Lisa A. Prager serves as the chair of the Compensation Committee.

Appointment of Executive Officers

In connection with, and effective upon the consummation of the First Merger, each of the executive officers of TeraWulf as of immediately prior to the First Merger resigned. Effective immediately after the effective time of the Second Merger, the board of directors of TeraWulf appointed (i) Mr. Paul B. Prager to serve as the Chief Executive Officer, (ii) Mr. Kenneth J. Deane to serve as the Chief Financial Officer and Treasurer, (iii) Mr. Nazar M. Khan to serve as the Chief Operating Officer and the Chief Technology Officer and (iv) Ms. Kerri M. Langlais to serve as the Chief Strategy Officer. Biographical information for these individuals is set forth in the Proxy Statement/Prospectus in the section titled "*Governance and Management of Holdco—Overview of Executive Officers and Directors*" beginning on page 149 thereof, which information is incorporated herein by reference.

Compensatory Arrangements

In connection with, and effective upon the consummation of the Second Merger, TeraWulf assumed from TeraCub the TeraWulf 2021 Omnibus Incentive Plan (the "***Incentive Plan***") and the form of restricted stock unit award agreement and the form of performance-based restricted stock unit award agreement, in each case, for use under the Incentive Plan. The foregoing description does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms of the Incentive Plan and the forms of respective award agreements filed as Exhibit 10.9 through and Exhibit 10.11 to this Current Report on Form 8-K and incorporated herein by reference.

In accordance with the terms of TeraCub's non-employee director compensation policy, effective upon the consummation of the Second Merger, TeraWulf assumed TeraCub's non-employee director compensation policy. The description of the non-employee director compensation policy is set forth in the Proxy Statement/Prospectus in the section titled "*Executive Compensation of Holdco—Compensation of Directors*" beginning on page 162 thereof, which information is incorporated herein by reference.

In connection with, and effective upon the consummation of the Second Merger, TeraWulf assumed the rights and obligations of TeraCub under the employment letter agreements and the restrictive covenant agreements entered into between TeraCub and the Company's executive officers, in each case, in accordance with the terms of such arrangements. The foregoing description does not purport to be complete and is subject to, and qualified in its entirety by reference to, the terms of the respective employment letter agreements and restrictive covenant agreements filed as Exhibit 10.1 through and Exhibit 10.8 to this Current Report on Form 8-K and incorporated herein by reference.

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

On the Closing Date, in connection with the completion of the Mergers and pursuant to the terms of the Merger Agreement, TeraWulf amended and restated the certificate of incorporation and bylaws to reflect the changes contemplated by the Merger Agreement and described in the Proxy Statement/Prospectus.

The foregoing description of the amended and restated certificate of incorporation of TeraWulf and the amended and restated bylaws of TeraWulf does not purport to be complete and is subject to, and qualified in its entirety by reference to, the amended and restated certificate of incorporation of TeraWulf and the amended and restated bylaws of TeraWulf filed as Exhibit 3.1 and Exhibit 3.2, respectively, to this Current Report on Form 8-K and incorporated herein by reference.

The information set forth in the Introductory Note to this Current Report on Form 8-K is incorporated herein by reference.

Item 8.01 Other Events.

On the Closing Date, TeraWulf issued a press release announcing the completion of the Mergers. A copy of the press release is filed as Exhibit 99.1 to this Current Report on Form 8-K and is incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(a) Financial statements of businesses or funds acquired.

The information required by this Item 9.01(a) was previously reported in the Proxy Statement/Prospectus and, accordingly, pursuant to General Instruction B.3 of Form 8-K is not required to be reported herein.

(b) Pro forma financial information.

The information required by this Item 9.01(b) was previously reported in the Proxy Statement/Prospectus and, accordingly, pursuant to General Instruction B.3 of Form 8-K is not required to be reported herein.

(d) Exhibits

Exhibit No.	Description of Exhibit
2.1	Agreement and Plan of Merger, dated as of June 24, 2021, by and among TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), IKONICS Corporation, Telluride Merger Sub I, Inc., Telluride Merger Sub II, Inc. and TeraCub Inc. (formerly known as TeraWulf Inc.) (incorporated by reference to Appendix A of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
2.2	Amendment to the Agreement and Plan of Merger, dated as of August 5, 2021, by and among TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), IKONICS Corporation, Telluride Merger Sub I, Inc., Telluride Merger Sub II, Inc. and TeraCub Inc. (formerly known as TeraWulf Inc.) (incorporated by reference to Appendix A of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
2.3	Amendment No. 2 to the Agreement and Plan of Merger, dated as of September 17, 2021, by and among TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), IKONICS Corporation, Telluride Merger Sub I, Inc., Telluride Merger Sub II, Inc. and TeraCub Inc. (formerly known as TeraWulf Inc.) (incorporated by reference to Appendix A of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
2.4	Amendment No. 3 to the Agreement and Plan of Merger, dated as of December 2, 2021, by and among TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), IKONICS Corporation, Telluride Merger Sub I, Inc., Telluride Merger Sub II, Inc. and TeraCub Inc. (formerly known as TeraWulf Inc.) (incorporated by reference to Exhibit 2.1 of TeraWulf Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on December 3, 2021).

2.5	Amendment No. 4 to the Agreement and Plan of Merger, dated as of December 8, 2021, by and among TeraWulf Inc. (formerly known as Telluride Holdco, Inc.), IKONICS Corporation, Telluride Merger Sub I, Inc., Telluride Merger Sub II, Inc. and TeraCub Inc. (formerly known as TeraWulf Inc.) (incorporated by reference to Exhibit 2.1 of TeraWulf Inc.'s Current Report on Form 8-K filed with the Securities and Exchange Commission on December 9, 2021).
3.1	Amended and Restated Certificate of Incorporation of TeraWulf Inc.
3.2	Amended and Restated Bylaws of TeraWulf Inc.
10.1	Employment Letter Agreement, dated November 4, 2021, by and between TeraWulf Inc. and Paul B. Prager (incorporated by reference to Exhibit 10.9 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.2	Employment Letter Agreement, dated November 4, 2021, by and between TeraWulf Inc. and Kenneth J. Deane (incorporated by reference to Exhibit 10.10 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.3	Employment Letter Agreement, dated November 4, 2021, by and between TeraWulf Inc. and Nazar M. Khan (incorporated by reference to Exhibit 10.11 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.4	Employment Letter Agreement, dated November 4, 2021, by and between TeraWulf Inc. and Kerri M. Langlais (incorporated by reference to Exhibit 10.12 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.5	Restrictive Covenant Agreement, dated as of November 4, 2021, by and between TeraWulf Inc. and Paul B. Prager (incorporated by reference to Exhibit 10.13 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.6	Restrictive Covenant Agreement, dated as of November 4, 2021, by and between TeraWulf Inc. and Kenneth J. Deane (incorporated by reference to Exhibit 10.14 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.7	Restrictive Covenant Agreement, dated as of November 4, 2021, by and between TeraWulf Inc. and Nazar M. Khan (incorporated by reference to Exhibit 10.15 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.8	Restrictive Covenant Agreement, dated as of November 4, 2021, by and between TeraWulf Inc. and Kerri M. Langlais (incorporated by reference to Exhibit 10.16 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.9	TeraWulf 2021 Omnibus Incentive Plan (incorporated by reference to Exhibit 10.17 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.10	Form of TeraWulf 2021 Omnibus Incentive Plan Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.18 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
10.11	Form of TeraWulf Inc. 2021 Omnibus Incentive Plan Performance-Based Restricted Stock Unit Award Agreement (incorporated by reference to Exhibit 10.19 of TeraWulf Inc.'s Amendment No. 6 to the Registration Statement on Form S-4 (file no. 333-258335) filed with the Securities and Exchange Commission on November 10, 2021).
99.1	Press Release, dated December 13, 2021.
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL.

SIGNATURES

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

Dated: December 13, 2021

TERAWULF INC.

By: /s/ Kenneth J. Deane
Name: Kenneth J. Deane
Title: Chief Financial Officer and Treasurer

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION OF
TELLURIDE HOLDCO, INC.

Telluride Holdco, Inc. (the "Corporation"), a corporation organized and existing under the General Corporation Law of the State of Delaware (the "DGCL"), certifies as follows:

FIRST: The present name of the Corporation is Telluride Holdco, Inc., which is the name under which the Corporation was originally incorporated. The date of filing of the Corporation's original Certificate of Incorporation with the Office of the Secretary of State of the State of Delaware was June 17, 2021 (the "Original Certificate of Incorporation").

SECOND: This Amended and Restated Certificate of Incorporation (this "Certificate of Incorporation"), which restates and integrates and also further amends the provisions of the Corporation's Original Certificate of Incorporation, has been duly adopted in accordance with the provisions of Sections 242 and 245 of the DGCL and has been adopted by the requisite vote of the sole stockholder of the corporation, acting by written consent in lieu of a meeting in accordance with Section 228 of the DGCL.

THIRD: This Amended and Restated Certificate of Incorporation shall become effective at 4:10 p.m., Eastern Standard Time, on December 13, 2021.

FOURTH: The Corporation's Original Certificate of Incorporation, as heretofore amended, is hereby amended, integrated and restated to read in its entirety as follows:

ARTICLE I
NAME

The name of the corporation is TeraWulf Inc. (the "Corporation").

ARTICLE II
ADDRESS; REGISTERED OFFICE AND AGENT

The address of the registered office of the Corporation in the State of Delaware is 850 New Burton Road, Suite 201, in the City of Dover, County of Kent, Delaware, 19904. The name of its registered agent at such address is Cogency Global Inc.

ARTICLE III
PURPOSES

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

ARTICLE IV
CAPITAL STOCK

4.1 Authorized Stock. The total number of shares of all classes of stock that the Corporation shall have authority to issue is 225,000,000 shares, divided into (a) 200,000,000 shares of Common Stock, with the par value of $0.001 per share (the "Common Stock"), and (b) 25,000,000 shares of Preferred Stock, with the par value of $0.001 per share (the "Preferred Stock"). The authorized number of shares of any class or series of stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the stock of the Corporation entitled to vote, and no separate vote of such class or series of stock the authorized number of which is to be increased or decreased shall be necessary to effect such change.

The Board (as defined below) is hereby authorized, by resolution or resolutions thereof, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designations, powers, preferences, rights, qualifications, limitations and restrictions in respect of the shares of such series. The powers, designations, preferences and relative, participating, optional or other rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, may differ from those of any and all other series at any time outstanding.

4.2 Voting. Except as may otherwise be provided in this Certificate of Incorporation or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Except as may otherwise be provided in this Certificate of Incorporation (including any certificate filed with the Office of the Secretary of State of the State of Delaware establishing the terms of a series of Preferred Stock in accordance with the second paragraph of Section 4.1 (such certificate, a "Preferred Stock Designation")) or by applicable law, no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.

4.3 Dividends. Subject to applicable law and the rights, if any, of the holders of any outstanding series of Preferred Stock, dividends may be declared and paid on the Common Stock out of funds legally available therefor at such times and in such amounts as the Board in its discretion shall determine.

4.4 Dissolution, Liquidation or Winding Up. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights, if any, of the holders of any outstanding series of Preferred Stock, the holders of the Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares of Common Stock held by them.

ARTICLE V
BOARD OF DIRECTORS

5.1 General. The business and affairs of the Corporation shall be managed by, or under the direction of, the Board of Directors (the "Board"). Except as otherwise provided for

or fixed pursuant to the terms of any Preferred Stock Designation relating to the rights of the holders of any series of Preferred Stock to elect additional directors, the total number of directors constituting the entire Board shall be not less than three nor more than ten, with the then-authorized number of directors being fixed from time to time by resolution of the Board. Unless and except to the extent that the Bylaws of the Corporation (the "Bylaws") shall so require, the election of directors need not be by written ballot.

5.2 Removal of Directors. Except for directors elected by the holders of any series of Preferred Stock pursuant to the terms of any Preferred Stock

Designation, if any (the "Preferred Stock Directors"), any director or the entire Board may be removed from office at any time, with or without cause, but only by the affirmative vote of a majority of the total voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

5.3 Vacancies and Newly Created Directorships. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board, or by a sole remaining director. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified.

5.4 Adoption, Amendment or Repeal of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board is expressly authorized to adopt, amend and repeal Bylaws, subject to the power of the stockholders of the Corporation to adopt, amend and repeal any Bylaws whether adopted by them or otherwise.

ARTICLE VI
LIMITATION OF LIABILITY

To the fullest extent permitted under the DGCL, as amended from time to time, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. Any amendment or repeal of this ARTICLE VI shall not adversely affect any right or protection of a director of the Corporation hereunder in respect of any act or omission occurring prior to the time of such amendment or repeal.

ARTICLE VII
INDEMNIFICATION

7.1 Right to Indemnification of Directors and Officers. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (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 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 corporation or of a partnership, limited liability company, joint venture, trust, organization or other entity or enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (except for judgments, fines and amounts paid in settlement in any action or suit by or in the right of the Corporation to procure a judgment in its favor) actually and reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 7.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board.

7.2 Prepayment of Expenses of Directors and Officers. To the extent not prohibited by applicable law, the Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this ARTICLE VII or otherwise.

7.3 Claims by Directors and Officers. If a claim for indemnification or advancement of expenses under this ARTICLE VII is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

7.4 Indemnification of Employees and Agents. The Corporation may indemnify and advance expenses to any person who was or is made or is threatened to be made or is otherwise involved in any Proceeding by reason of the fact that such person, or a person for whom such person is the legal representative, is or was an employee or agent of the Corporation or, while an employee or agent 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, limited liability company, joint venture, trust, organization or other entity or enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees) reasonably incurred by such person in connection with such Proceeding. The ultimate determination of entitlement to indemnification of persons who are non-director or officer employees or agents shall be made in such manner as is determined by the Board in its sole discretion. Notwithstanding the foregoing sentence, the Corporation shall not be required to indemnify a person in connection with a Proceeding initiated by such person if the Proceeding was not authorized in advance by the Board.

7.5 Advancement of Expenses of Employees and Agents. The Corporation may pay the expenses (including attorneys' fees) incurred by an employee or agent in defending any Proceeding in advance of its final disposition on such terms and conditions as may be determined by the Board.

7.6 Nonexclusivity of Rights. The rights conferred on any Covered Person by this ARTICLE VII shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of this Certificate of Incorporation, the Bylaws, agreement, vote of stockholders or disinterested directors or otherwise.

7.7 Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this ARTICLE VII shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

7.8 Insurance. The Board may, to the full extent permitted by applicable law as it presently exists, or may hereafter be amended from time to time, authorize an appropriate officer or officers to purchase and maintain at the Corporation's expense insurance: (a) to indemnify the Corporation for any obligation which it incurs as a result of the indemnification of directors, officers and employees under the provisions of this ARTICLE VII; and (b) to indemnify or insure directors, officers and employees against liability in instances in which they may not otherwise be indemnified by the Corporation under the provisions of this ARTICLE VII.

ARTICLE VIII
SECTION 203

The Corporation shall not be governed by Section 203 of the DGCL.

ARTICLE IX
RESTRICTION ON STOCKHOLDER ACTION BY WRITTEN CONSENT

Except as otherwise provided for or fixed pursuant to ARTICLE IV or any Preferred Stock Designation relating to the rights of holders of any series of Preferred Stock, no action that is required or permitted to be taken by the stockholders of the Corporation at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders.

ARTICLE X
CORPORATE OPPORTUNITIES

10.1 Sponsor Group. For purposes of this ARTICLE X, "Sponsor" shall mean Paul Prager and his controlled affiliates, including funds or portfolio companies of funds managed or advised by a controlled affiliate of Sponsor and any of their respective directors, officers or employees, but excluding the Corporation and its subsidiaries (which word, for all purposes hereof, shall be deemed to include direct and indirect subsidiaries).

10.2 Corporate Opportunities. To the fullest extent permitted by applicable law, including Section 122(17) of the DGCL, but subject to Section 10.3 below:

(a) The Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in any business opportunity, transaction or other matter (a "Corporate Opportunity"): (i) relating to the Sponsor's continued involvement in (A) the Bitcoin mining business in Hardin, MT, that is in existence as of the date of

the filing of this Amended and Restated Certificate of Incorporation, on behalf of Beowulf Energy LLC in connection with its building and operation of a data center for Marathon Digital Holdings Inc., (B) the asset management, operations and management consulting with respect to Rijnmond Power Holding B.V. as well as its wholly owned 810 MW combined cycle gas turbine Rijnmond power generation facility near Rotterdam, the Netherlands, on behalf of Beowulf Energy LLC and Beowulf Energy Europe LLC and (C) the asset management, operations, financing and redevelopment of the portfolio of domestic power generation assets owned by Heorot Power Holdings LLC and located in California, Montana, Colorado, Massachusetts and New York on behalf of Beowulf Energy LLC, and (ii) the raising of any fund or other capital for the purposes of investing in crypto currencies other than Bitcoin, mine crypto currencies other than Bitcoin, invest in crypto-related equipment and engage in financing arrangements associated with the foregoing, in each case, in which the Sponsor, any officer, director, member, partner or employee of any entity comprising the Sponsor, and any portfolio company in which such entities or persons have any equity interest (other than the Corporation and its subsidiaries) (each, a "Specified Party") participates or desires or seeks to participate in, even if the Corporate Opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so; and

(b) Each such Specified Party shall have no duty to communicate or offer any Corporate Opportunity to the Corporation and shall not be liable to the Corporation or any of its subsidiaries or any stockholder for breach of any fiduciary or other duty, as a director or officer or controlling stockholder or otherwise, by reason of the fact that such Specified Party pursues or acquires such Corporate Opportunity, directs such Corporate Opportunity to another person or fails to present such Corporate Opportunity, or information regarding such Corporate Opportunity, to the Corporation or its subsidiaries.

10.3 Corporate Opportunities to Excluded Persons. Notwithstanding the foregoing, the provisions of Section 10.2 of this ARTICLE X shall not apply to, and shall not result in the renunciation by the Corporation or any of its subsidiaries of any interest or expectancy in a Corporate Opportunity with respect to, a Specified Party who either (1) is a director, officer or employee of the Corporation or any of its subsidiaries and who is first offered the applicable Corporate Opportunity solely in his or her capacity as a director, officer or employee of the Corporation or any of its subsidiaries or (2) first identified the applicable Corporate Opportunity solely through the disclosure of the Corporation's or any of its subsidiaries' confidential information in circumstances in which the Corporation had a reasonable expectation that such information would be held in confidence (a Specified Party in the circumstances of the foregoing clauses (1) or (2), an "Excluded Person"). For avoidance of doubt, this Section 10.3 shall not affect the effectiveness of any renunciation by the Corporation or any of its subsidiaries of any interest or expectancy in any such Corporate Opportunity by operation of Section 10.2 of this ARTICLE X as to any other Specified Party who is not an Excluded Person.

Neither the amendment nor repeal of this ARTICLE X, nor the adoption of any provision of this Certificate of Incorporation or the Bylaws, nor, to the fullest extent permitted by Delaware law, any modification of law, shall adversely affect any right or protection of any person granted pursuant hereto existing at, or arising out of or related to any event, act or omission that occurred prior to, the time of such amendment, repeal, adoption or modification.

This ARTICLE X shall not limit any protections or defenses available to, or indemnification rights of, any director or officer of the Corporation under this Certificate of Incorporation, the Bylaws or applicable law.

ARTICLE XI
CERTIFICATE AMENDMENTS

The Corporation reserves the right at any time, and from time to time, to amend or repeal any provision contained in this Certificate of Incorporation, and add other provisions authorized by the laws of the State of Delaware at the time in force, in the manner now or hereafter prescribed by applicable law; and all rights, preferences and privileges of whatsoever nature conferred upon stockholders, directors or any other persons whomsoever by and pursuant to this Certificate of Incorporation (as amended) are granted subject to the rights reserved in this ARTICLE XI.

ARTICLE XII
EXCLUSIVE FORUM

Unless the Corporation consents in writing to the selection of an alternative forum, and subject to applicable jurisdictional requirements, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, this Certificate of Incorporation or the Bylaws, or (d) any action asserting a claim governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks jurisdiction over such action or proceeding, then another court of the State of Delaware or, if no court of the State of Delaware has jurisdiction, then the United States District Court for the District of Delaware).

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 exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933. Notwithstanding the foregoing, the provisions of this ARTICLE XII shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction.

[*Remainder of Page Intentionally Blank*]

IN WITNESS WHEREOF, Telluride Holdco, Inc. has caused this Amended and Restated Certificate of Incorporation to be executed by its duly authorized officer this 13th day of December 2021.

By: /s/ Paul Prager
Name: Paul Prager
Title: Chief Executive Officer

EXHIBIT 3.2

AMENDED AND RESTATED BYLAWS

OF

TERAWULF INC.

(A Delaware Corporation)

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ARTICLE I

DEFINITIONS

As used in these Bylaws, unless the context otherwise requires, the term:

1.1. "Board" means the Board of Directors of the Corporation.

1.2. "Bylaws" means these Amended and Restated Bylaws of the Corporation, as amended from time to time.

1.3. "Certificate of Incorporation" means the Amended and Restated Certificate of Incorporation of Telluride Holdco, Inc., as amended from time to time including by any Preferred Stock Designation (as defined in the Amended Certificate of Incorporation of Telluride Holdco, Inc. filed with the Office of the Secretary of State of the State of Delaware on the Closing Date).

1.4. "Chairperson" means the Chairperson of the Board.

1.5. "Closing Date" means the first such date on which the Corporation has a class of equity securities registered under the Exchange Act and listed or admitted to trading on a national securities exchange following the consummation of the transactions contemplated by that certain Merger Agreement, dated as of June 24, 2021.

1.6. "Corporation" means TeraWulf Inc.

1.7. "DGCL" means the General Corporation Law of the State of Delaware, as amended from time to time.

1.8. "Directors" means the directors of the Corporation.

1.9. "Exchange Act" means the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, each as amended from time to time.

1.10. "law" means any U.S. or non-U.S., federal, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a governmental authority (including any

department, court, agency or official, or non-governmental self-regulatory organization, agency or authority and any political subdivision or instrumentality thereof).

1.11. "Office of the Corporation" means the principal executive office of the Corporation, the Corporation's registered office in the State of Delaware or any other offices at any other place or places designated from time to time by the Board as an Office of the Corporation for purposes of these Bylaws.

1.12. "President" means the President of the Corporation.

1.13. "Public Disclosure" of any date or other information means disclosure thereof by a press release reported by the Dow Jones News Services, Associated Press or comparable U.S. national news service or in a document publicly filed by the Corporation with the SEC pursuant to Sections 13, 14 or 15(d) of the Exchange Act.

1.14. "SEC" means the U.S. Securities and Exchange Commission.

1.15. "Secretary" means the Secretary of the Corporation.

1.16. "Stockholders Agreement" means that certain voting proxy agreement executed by Bayshore Capital LLC and Stammtisch Investments LLC ("Stammtisch").

1.17. "Stockholder Associated Person" means, with respect to any Stockholder, (i) any other beneficial owner of stock of the Corporation that are owned by such Stockholder and (ii) any person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Stockholder or such beneficial owner. For purposes of this definition, the terms "controls," "controlled by" and "under common control with" mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract or otherwise.

1.18. "Stockholders" means the stockholders of the Corporation as set forth on its stock ledger.

1.19. "Treasurer" means the Treasurer of the Corporation

1.20. "Vice President" means a Vice President of the Corporation.

ARTICLE II

STOCKHOLDERS

2.1. Place of Meetings. Meetings of Stockholders may be held at such place, if any, either within or without the State of Delaware, or by means of remote communication, as may be designated by the Board from time to time.

2.2. Annual Meeting.

(a) A meeting of Stockholders for the election of Directors and such other business as may be properly brought before the meeting in accordance with these Bylaws shall be held annually at such date and time as may be designated by the Board from time to time.

(b) At an annual meeting of the Stockholders, only business (other than business relating to the nomination or election of Directors which is governed by Section 3.3) that has been properly brought before the Stockholder meeting in accordance with the procedures set forth in this Section 2.2 shall be conducted. To be properly brought before a meeting of Stockholders, such business must be brought before the meeting (i) by or at the direction of the Board or any committee thereof or (ii) by a Stockholder who (A) was a Stockholder when the

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notice required by this Section 2.2 is delivered to the Secretary and at the time of the meeting, (B) is entitled to vote at the meeting and (C) complies with the notice and other provisions of this Section 2.2. Subject to Section 2.2(i), and except with respect to the calling of special meetings of Stockholders (which is governed by Section 2.3) and nominations or elections of Directors (which are governed by Section 3.3), Section 2.2(b)(ii) is the exclusive means by which a Stockholder may bring business before an annual meeting of Stockholders (other than or business brought by Stammtisch and any entity that controls, is controlled by or under common control with Stammtisch (other than the Corporation or any company that is controlled by the Corporation) (the "Stammtisch Affiliates") at any time prior to the date when Stammtisch first ceases to beneficially own in the aggregate (directly or indirectly) at least fifteen percent (15%) of the voting power of the then outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors (the "Advanced Notice Trigger Date")). Any business brought before a meeting in accordance with Section 2.2(b)(ii) is referred to as "Stockholder Business."

(c) Subject to Section 2.2(i), at any annual meeting of Stockholders, all proposals of Stockholder Business must be made by timely written notice given by or on behalf of a Stockholder (the "Notice of Business") and must otherwise be a proper matter for Stockholder action under applicable law. To be timely, the Notice of Business (other than such a notice by Stammtisch prior to the Advance Notice Trigger Date, which may be delivered at any time up to thirty-five (35) days prior to the mailing of the definitive proxy statement pursuant to Section 14(a) of the Exchange Act related to the next annual meeting of stockholders) must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no earlier than 120 days and no later than 90 days before the first anniversary of the date of the prior year's annual meeting of Stockholders; provided, however, that if (A) the annual meeting of Stockholders is advanced by more than 30 days, or delayed by more than 60 days, from the first anniversary of the prior year's annual meeting of Stockholders or (B) no annual meeting was held during the prior year, the notice by the Stockholder to be timely must be received (x) no earlier than 30 days before such annual meeting and (y) no later than the tenth day after the day on which the notice of such annual meeting was first made by mail or Public Disclosure; provided, further, that for purposes of the Corporation's first annual meeting of Stockholders after the Closing Date, the date of the prior year's annual meeting of Stockholders shall be deemed to be the Closing Date. In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of a Stockholder meeting commence a new time period (or extend any time period) for the giving of the Notice of Business.

(d) The Notice of Business must set forth:

(i) the name and address of each Stockholder proposing Stockholder Business (the "Proponent"), as they appear on the Corporation's books;

(ii) the name and address of any Stockholder Associated Person and any Associate (as defined under Rule 12b-2 of the Exchange Act) of an Associated Person;

(iii) as to each Proponent and any Stockholder Associated Person, (A) the class or series and number of shares of stock directly or indirectly held of record and beneficially by the Proponent or Stockholder Associated Person, (B) the date

such shares of stock were acquired, (C) a description of any agreement, arrangement or understanding, direct or indirect, with respect to such Stockholder Business between or among the Proponent, any Stockholder Associated Person or any others (including their names) acting in concert with any of the foregoing, (D) a description of any agreement, arrangement or understanding (including any derivative or short positions, profit interests, options, hedging transactions and borrowed or loaned shares) that has been entered into, directly or indirectly, by the Proponent or any Stockholder Associated Person and that remains in effect, the effect or intent of which is to mitigate loss to, manage risk or benefit of share price changes for, or increase or decrease the voting power of the Proponent or any Stockholder Associated Person with respect to shares of stock of the Corporation (a "Derivative"), (E) a description in reasonable detail of any proxy (including revocable proxies), contract, arrangement, understanding or other relationship pursuant to which the Proponent or any Stockholder Associated Person has a right to vote any shares of stock of the Corporation (F) any rights to dividends on the stock of the Corporation owned beneficially by the Proponent or any Stockholder Associated Person that are separated or separable from the underlying stock of the Corporation, (G) any proportionate interest in stock of the Corporation or Derivatives held, directly or indirectly, by a general or limited partnership in which the Proponent or any Stockholder Associated Person is a general partner or, directly or indirectly, beneficially owns an interest in a general partner, and (H) any profit-sharing or any performance-related fees (other than an asset-based fee) that any Proponent or any Stockholder Associated Person is entitled to, based on any increase or decrease in the value of stock of the Corporation or Derivatives thereof, if any, as of the date of such notice;

(iv) all other information that would be required to be filed with the SEC if the Proponents or Stockholder Associated Persons were participants in a solicitation subject to Section 14 of the Exchange Act (the information specified in Section 2.2(d)(i) to (iv) is referred to herein as "Stockholder Information");

(v) a representation that each Proponent is a Stockholder entitled to vote at the meeting and intends to appear in person or by a qualified representative (as defined in Section 2.2(h)) at the meeting to propose such Stockholder Business;

(vi) a brief description of the Stockholder Business desired to be brought before the annual meeting, the text of the proposal (including the text of any resolutions proposed for consideration and, if such business includes a proposal to amend the Bylaws, the language of the proposed amendment) and the reasons for conducting such Stockholder Business at the meeting;

(vii) any material interest of each Proponent and any Stockholder Associated Person in such Stockholder Business;

(viii) a representation as to whether the Proponent intends (A) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt such Stockholder Business or (B) otherwise to solicit proxies from Stockholders in support of such Stockholder Business; and

(ix) a representation and undertaking that the Proponents shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

(e) The Proponents shall also provide any other information reasonably requested from time to time by the Corporation within three (3) business days after each such request.

(f) In addition, the Proponent shall affirm as true and correct the information provided to the Corporation in the Notice of Business or at the Corporation's request pursuant to Section 2.2(e) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting and (ii) the date that is ten (10) business days before the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (x) five (5) business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (y) not later than seven (7) business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of ten (10) business days before the meeting or reconvening any adjournment or postponement thereof).

(g) Except to the extent otherwise determined by the Board, the person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that business was not properly brought before the meeting in accordance with the procedures set forth in this Section 2.2. Any such business not properly brought before the meeting shall not be transacted.

(h) Except to the extent otherwise determined by the Board, if the Proponent (or a qualified representative of the Proponent) does not appear at the meeting of Stockholders to present the Stockholder Business, such business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.2, to be considered a "qualified representative" of the Proponent, a person must be a duly authorized officer, manager or partner of such Stockholder or must be authorized by a writing executed by such Stockholder or an electronic transmission delivered by such Stockholder to act for such Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(i) The notice requirements of this Section 2.2 shall be deemed satisfied with respect to shareholder proposals that have been properly brought under Rule 14a-8 of the Exchange Act and that are included in a proxy statement that has been prepared by the Corporation to solicit proxies for such annual meeting. Further, nothing in this Section 2.2 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation pursuant to any applicable provision of the Certificate of Incorporation.

2.3. Special Meetings.

(a) Special meetings of Stockholders may be called at any time by, and only by, (i) the Board, (ii) at any time prior to the first date on which Stammtisch and Stammtisch Affiliates cease to beneficially own in the aggregate (directly or indirectly) shares of capital stock entitled to vote generally for the election of directors of the Corporation representing at least fifteen percent (15%) (as adjusted for stock splits, reverse stock splits and similar transactions) of such shares of capital stock owned by Stammtisch and Stammtisch Affiliates as of the Closing Date, by the Chairperson upon written request by Stammtisch delivered in writing to the Board (such a request, a "Stammtisch Request"), or (iii) solely to the extent required by Section 2.3(b), the Secretary. Business transacted at any special meeting of Stockholders shall be limited to the purposes stated in the Corporation's notice of the meeting.

(b) Subject to Section 2.3(d)-(h), a special meeting of Stockholders shall be called by the Secretary upon proper written request or requests

(each, a "Meeting Request") given by or on behalf of one or more Stockholders (each, a "Requesting Stockholder") who hold at least fifty percent (50%) of the voting power of all outstanding shares of Common Stock (as defined in the Certificate of Incorporation) (the "Required Percent"). The record date for determining Stockholders entitled to request a special meeting shall be the date on which the first Meeting Request for such special meeting was received by the Secretary in the manner required by the preceding sentence.

(c) To be in proper form, a Meeting Request shall be signed by the Requesting Stockholder or Requesting Stockholders submitting such Meeting Request, shall be delivered to and received by the Secretary at the Office of the Corporation by hand or by certified or registered mail, return receipt requested, and shall set forth:

(i) a statement of the specific purpose or purposes of the meeting and the matters proposed to be acted on at the meeting, the reasons for conducting such business at the meeting, and any material interest in such business of each such Requesting Stockholder;

(ii) the name and address of each such Requesting Stockholder as it appears on the Corporation's stock ledger;

(iii) the number of shares of the Corporation's Common Stock owned of record and beneficially by each such Requesting Stockholder;

(iv) as to each such Requesting Stockholder, the Stockholder Information (except that references to the "Proponent" and "Stockholder Business" in Section 2.2(d)(i) to (iv) shall instead refer, respectively, to each "Requesting Stockholder" and "the matters proposed to be acted on at the special meeting" for purposes of this paragraph);

(v) any material interest of each Requesting Stockholder in the matters proposed to be acted on at the special meeting;

(vi) a representation as to whether each Requesting Stockholder intends (A) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve or adopt the matters proposed to be acted on at the special meeting or (B) otherwise to solicit proxies from Stockholders in support of the matters proposed to be acted on at the special meeting; and

(vii) a representation that each Requesting Stockholder shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

The requirement set forth in clause (iv) of the immediately preceding sentence shall not apply to (A) any Stockholder, or beneficial owner, as applicable, who has provided a written request solely in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a solicitation statement filed on Exchange Act Schedule 14A or (B) any Stockholder that is a broker, bank or custodian (or similar entity) and is acting solely as nominee on behalf of a beneficial owner.

(d) The Requesting Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within ten (10) business days after each such request.

(e) The Requesting Stockholders shall affirm as true and correct the information provided to the Corporation in the Meeting Request or at the Corporation's request pursuant to Section 2.3(d) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is ten (10) business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (1) five (5) business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (2) not later than seven (7) business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of ten (10) business days before the meeting or reconvening any adjournment or postponement thereof).

(f) A Requesting Stockholder may revoke its Meeting Request at any time by written revocation delivered to the Secretary, and if, following such revocation, there are unrevoked Meeting Requests from less than the Required Percent, the Board, in its discretion, may cancel the special meeting of the Stockholders.

(g) A special meeting requested by Stockholders shall be held at such date, time and place, if any, either within or without the state of Delaware or by means of remote communication, as may be fixed by the Board; provided, however, that the date of any such special meeting shall be not more than ninety (90) days after the receipt by the Secretary in the manner required by Section 2.3(c) of Meeting Requests from the Required Percent.

(h) Notwithstanding anything to the contrary in this Section 2.3:

(i) A special meeting requested by Stockholders shall not be held if (A) the Meeting Requests from the Required Percent do not comply with these Bylaws or the Certificate of Incorporation; (B) the action relates to an item of business that is not a proper subject for stockholder action under applicable law; (C) the Meeting Request is received by the Secretary during the period commencing ninety (90) days prior to the first anniversary of the date of the immediately preceding annual meeting of Stockholders and ending on the date of adjournment of the next annual meeting of Stockholders (provided, that, for purposes of the Corporation's first annual meeting of Stockholders after the Closing Date, the date of the immediately preceding annual meeting of Stockholders shall be deemed to be the Closing Date); (D) an identical or substantially similar item of business, as determined in good faith by the Board, was presented at a meeting of Stockholders held not more than ninety (90) days before the Meeting Requests from the Required Percent are received by the Secretary; or (E) the Meeting Requests from the Required Percent were made in a manner that involved a violation of Regulation 14A under the Exchange Act or other applicable law; and

(ii) Nothing herein shall prohibit the Board from including in the Corporation's notice of any special meeting of Stockholders called by the Secretary additional matters to be submitted to the Stockholders at such meeting not included in the Meeting Request(s) in respect of such meeting.

2.4. Record Date.

(a) For the purpose of determining the Stockholders entitled to notice of any meeting of Stockholders or any adjournment thereof, unless otherwise required by the Certificate of Incorporation or applicable law, the Board may fix a record date (the "Notice Record Date"), which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than sixty (60) or less than ten (10) days before the date of such meeting. The Notice Record 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 Notice Record Date, that a later date on or before the date of the meeting shall be the date for making such determination (the "Voting Record Date"). For the purposes of determining the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock or take any other lawful action, unless otherwise required by the Certificate of Incorporation or applicable law, the Board may fix a record date, which record date shall not precede the date on which the resolution fixing the record date was adopted by the Board and shall not be more than sixty (60) days prior to such action.

(b) If no such record date is fixed by the Board:

(i) 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; and

(ii) The record date for the purposes of determining the Stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, exercise any rights in respect of any change, conversion or exchange of stock or take any other lawful action shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

(c) When a determination of Stockholders entitled to notice of or to vote at any meeting of Stockholders has been made as provided in this Section 2.4, such determination shall apply to any adjournment thereof, unless the Board fixes a new Voting Record Date for the adjourned meeting, in which case the Board shall also fix such Voting Record Date or a date earlier than such date as the new Notice Record Date for the adjourned meeting.

2.5. Notice of Meetings of Stockholders. Whenever under the provisions of applicable law, the Certificate of Incorporation or these Bylaws Stockholders are required or permitted to take any action at a meeting, a notice of the meeting in the form of a writing or electronic transmission shall be given stating 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, the Notice Record Date and the Voting Record Date, if such date is different from the Notice Record Date, and, in the case of a special meeting, the purposes for which the meeting is called. Unless otherwise provided by these Bylaws or applicable law, notice of any meeting shall be given, not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each Stockholder entitled to vote at such meeting as of the Notice Record Date. If mailed, such notice shall be deemed to be given when deposited in the U.S. mail, with postage prepaid, directed to the Stockholder at his or her address as it appears on the records of the Corporation. If given by electronic mail, such notice shall be deemed to be given when directed to such Stockholder's electronic mail address unless the Stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited pursuant to the terms of the DGCL. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Corporation. An affidavit of the Secretary or the transfer agent of the Corporation that the notice required by this Section 2.5 has been given shall, in the absence of fraud, be *prima facie* evidence of the facts stated therein. If a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof, and 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 adjourned meeting are announced at the meeting at which the adjournment is taken. Any business that might have been transacted at the meeting as originally called may be transacted at the adjourned meeting. If, however, the adjournment is for more than thirty (30) days, or if after the adjournment a new Notice Record Date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Stockholder entitled to vote at the meeting. If after the adjournment a new Voting Record Date is fixed for the adjourned meeting, the Board shall fix a new Notice Record Date in accordance with Section 2.4(c) and shall give notice of such adjourned meeting to each Stockholder entitled to vote at such meeting as of the Notice Record Date.

2.6. Waivers of Notice. Whenever the giving of any notice to Stockholders is required by applicable law, the Certificate of Incorporation or these Bylaws, a written waiver, signed by the Stockholder entitled to notice, or a waiver by electronic transmission by such

Stockholder, whether before or after the event as to which such notice is required, shall be deemed equivalent to notice. Attendance by a Stockholder at a meeting shall constitute a waiver of notice of such meeting except when the Stockholder attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting has not been lawfully called or convened. Neither the business to be transacted at, nor the purposes of, any regular or special meeting of the Stockholders need be specified in any waiver of notice.

2.7. List of Stockholders. The Secretary shall prepare and make, at least ten (10) days before every meeting of Stockholders, a complete, alphabetical list of the Stockholders entitled to vote at the meeting, and showing the address of each Stockholder and the number of shares registered in the name of each Stockholder. Such list may be examined by any Stockholder, at the Stockholder's expense, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting, during ordinary business hours at the principal place of business of the Corporation or on a reasonably accessible electronic network or other electronic means as permitted by applicable law. If the meeting is to be held at a place, the list shall also 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 held solely by means of remote communication, the list shall also be open for inspection as provided by applicable law. Except as provided by applicable law, the stock ledger shall be the only evidence as to who are the Stockholders entitled to examine the list of Stockholders or to vote in person or by proxy at any meeting of Stockholders.

2.8. Quorum of Stockholders; Adjournment in the Absence of a Quorum. At each meeting of Stockholders, the presence, in person or represented by proxy, of the holders of a majority of the voting power of all outstanding shares of stock entitled to vote at the meeting of Stockholders shall constitute a quorum for the transaction of business at such meeting, except that when specified business is to be voted on by one or more classes or series of stock voting as a separate class, the holders of a majority of the voting power of the shares of such classes or series shall constitute a quorum of such separate class for the transaction of such business. In the absence of a quorum, the person presiding over the meeting in accordance with Section 2.11 or, in the absence of such person, the holders of a majority of the voting power of the shares of stock present in person or represented by proxy at any meeting of Stockholders, including an adjourned meeting, may adjourn such meeting to another time or place. Shares of its own stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity. The Stockholders present at a duly called meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the withdrawal of enough Stockholders to leave less than a quorum.

2.9. Voting; Proxies.

(a) At any meeting of Stockholders, all matters other than the election of directors, and except as otherwise provided by the Certificate of Incorporation, these Bylaws or any applicable law, shall be decided by the affirmative vote of a majority of the voting power of

shares of stock present in person or represented by proxy and entitled to vote thereon. At all meetings of Stockholders for the election of Directors, a plurality of the votes cast shall be sufficient to elect each Director.

(b) Each Stockholder entitled to vote at a meeting of Stockholders may authorize another person or persons to act for such Stockholder by proxy 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. A proxy shall be irrevocable if it states that it is irrevocable and if, and only so long as, it is coupled with an interest sufficient in law to support an irrevocable power. A Stockholder may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary a revocation of the proxy or by delivering a new duly authorized proxy bearing a later date.

2.10. Voting Procedures and Inspectors at Meetings of Stockholders. The Board, in advance of any meeting of Stockholders, shall appoint one or more inspectors, who may be employees of the Corporation, to act at the meeting and make a written report thereof. The Board may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors shall (a) ascertain the number of shares outstanding and the voting power of each, (b) determine the shares represented at the meeting and the validity of proxies and ballots, (c) count all votes and ballots, (d) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors and (e) certify their determination of the number of shares represented at the meeting and their count of all votes and ballots. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of their duties. Unless otherwise provided by the Board, the date and time of the opening and the closing of the polls for each matter upon which the Stockholders will vote at a meeting shall be determined by the person presiding at the meeting and shall be announced at the meeting. No ballot, proxy, vote or any revocation thereof or change thereto, shall be accepted by the inspectors after the closing of the polls unless the Court of Chancery of the State of Delaware upon application by a Stockholder shall determine otherwise. In determining the validity and counting of proxies and ballots cast at any meeting of Stockholders, the inspectors may consider such information as is permitted by applicable law. No person who is a candidate for office at an election may serve as an inspector at such election.

2.11. Conduct of Meetings; Adjournment After Establishing a Quorum. The Board may adopt such rules and procedures for the conduct of Stockholder meetings as it deems appropriate. At each meeting of Stockholders, the President or, in the absence of the President, the Chairperson or, if the Chairperson is absent, any officer of the Corporation designated by the Board shall preside over the meeting. Except to the extent inconsistent with the rules and procedures as adopted by the Board, the person presiding over the meeting of Stockholders shall have the right and authority to convene, adjourn and reconvene the meeting from time to time, to prescribe such additional rules and procedures and to do all such acts as, in the judgment of such person, are appropriate for the proper conduct of the meeting. Such rules and procedures, whether adopted by the Board or prescribed by the person presiding over the meeting, may include (a) the

establishment of an agenda or order of business for the meeting, (b) rules and procedures for maintaining order at the meeting and the safety of those present, (c) limitations on attendance at or participation in the meeting to Stockholders, their duly authorized and constituted proxies or such other persons as the person presiding over the meeting shall determine, (d) restrictions on entry to the meeting after the time fixed for the commencement thereof and (e) limitations on the time allotted to questions or comments by participants. Subject to any prior, contrary determination by the Board, the person presiding over any meeting of Stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, may determine and declare to the meeting that a matter or business was not properly brought before the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of Stockholders shall not be required to be held in accordance with the rules of parliamentary procedure. The Secretary shall act as secretary of the meeting. If none of the officers above designated to act as the person presiding over the meeting or as secretary of the meeting shall be present, a person presiding over the meeting or a secretary of the meeting, as the case may be, shall be designated by the Board and, if the Board has not so acted, in the case of the designation of a person to act as secretary of the meeting, designated by the person presiding over the meeting.

ARTICLE III

DIRECTORS

3.1. General Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board. The Board may adopt such rules and procedures, not inconsistent with the Certificate of Incorporation, these Bylaws or applicable law, as it may deem proper for the conduct of its meetings and the management of the Corporation.

3.2. Number; Term of Office. The Board shall consist of not less than three (3) nor more than ten (10) members, the number thereof to be determined in accordance with the Certificate of Incorporation. Subject to obtaining any required stockholder votes or consents under the Stockholders Agreement (as long as such agreement is in effect), each Director shall hold office until a successor is duly elected and qualified or until the Director's earlier death, resignation, disqualification or removal.

3.3. Nominations of Directors.

(a) Subject to Section 3.3(k) and obtaining any required stockholder votes or consents under the Stockholders Agreement and except as otherwise provided by the Stockholders Agreement, only persons who are nominated in accordance with the procedures set forth in this Section 3.3 are qualified for election as Directors.

(b) Nominations of persons for election to the Board may only be made at a meeting properly called for the election of Directors and only (i) by or at the direction of the Board or any committee thereof or (ii) by a Stockholder who (A) was a Stockholder when the notice required by this Section 3.3 is delivered to the Secretary and at the time of the meeting, (B) is entitled to vote for the election of Directors at the meeting and (C) complies with the notice

and other provisions of this Section 3.3 or (D) in accordance with the Stockholders Agreement. Subject to Section 3.3(k) and obtaining any required votes or consents under the Stockholders Agreement, Section 3.3(b)(ii) is the exclusive means by which a Stockholder may nominate a person for election to the Board. Persons nominated in accordance with Section 3.3(b)(ii) are referred to as "Stockholder Nominees." A Stockholder nominating persons for election to the Board is referred to as the "Nominating Stockholder."

(c) Subject to Section 3.3(k) and obtaining any required stockholder votes or consents under the Stockholders Agreement, all nominations of Stockholder Nominees must be made by timely written notice given by or on behalf of a Stockholder (the "Notice of Nomination"). To be timely, the Notice of Nomination (other than such a notice by Stammtisch prior to the Advance Notice Trigger Date, which may be delivered at any time up to thirty-five (35) days prior to the next annual meeting of stockholders) must be delivered personally or mailed to and received at the Office of the Corporation, addressed to the attention of the Secretary, by the following dates:

(i) in the case of the nomination of a Stockholder Nominee for election to the Board at an annual meeting of Stockholders (other than such a nomination by Stammtisch prior to the Advance Notice Trigger Date, which may be made pursuant to a Notice of Nomination delivered at any time up to thirty-five (35) days prior to the next annual meeting of stockholders), no earlier than 120 days and no later than 90 days before the first anniversary of the date of the prior year's annual meeting of Stockholders; provided, however, that if (A) the annual meeting of Stockholders is advanced by more than thirty (30) days, or delayed by more than sixty (60) days, from the first anniversary of the prior year's annual meeting of Stockholders or (B) no annual meeting was held during the prior year, the notice by the Stockholder to be timely must be received (1) no earlier than thirty (30) days before such annual meeting and (2) no later than the tenth day after the day on which the notice of such annual meeting was first made by mail or Public Disclosure; provided, further, that for purposes of the Corporation's first annual meeting of Stockholders after the Closing Date, the date of the prior year's annual meeting of Stockholders shall be deemed to be the Closing Date; and

(ii) in the case of the nomination of a Stockholder Nominee for election to the Board at a special meeting of Stockholders (other than such a nomination by Stammtisch prior to the Advance Notice Trigger Date, which may be made by a Notice of Nomination delivered at any time up to the later of (i) thirty-five (35) days prior to the special meeting of stockholders and (ii) the tenth (10^{th}) day following the day on which the notice of such special meeting and the nominees proposed by the Board of Directors to be elected at such meeting was made by Public Disclosure), no earlier than thirty (30) days before and no later than the tenth (10^{th})

day after the day on which the notice of such special meeting was first made by mail or Public Disclosure.

(d) Notwithstanding anything to the contrary, if the number of Directors to be elected to the Board at a meeting of Stockholders is increased and there is no Public Disclosure by the Corporation naming the nominees for the additional directorships or specifying the increased size of the Board at least ten (10) days before the first anniversary of the preceding year's annual meeting (in the case of an annual meeting) or before such special meeting (in the

case of a special meeting), a Notice of Nomination shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered personally and received at the Office of the Corporation, addressed to the attention of the Secretary, no later than the close of business on the tenth (10^{th}) day following the day on which such Public Disclosure is first made by the Corporation.

(e) In no event shall an adjournment, postponement or deferral, or Public Disclosure of an adjournment, postponement or deferral, of an annual or special meeting commence a new time period (or extend any time period) for the giving of the Notice of Nomination.

(f) The Notice of Nomination shall set forth:

(i) the Stockholder Information with respect to each Nominating Stockholder and Stockholder Associated Person (except that references to the "Proponent" in Section 2.2(d)(i)-(iv) shall instead refer to the "Nominating Stockholder," and the disclosure required by Section 2.2(d)(iii)(C) may be omitted, for purposes of this Section 3.3(f)(i));

(ii) a representation that each Nominating Stockholder is a Stockholder entitled to vote at the meeting and intends to appear in person or by a qualified representative (as defined in Section 3.3(j)) at the meeting to propose such nomination;

(iii) all information regarding each Stockholder Nominee and Stockholder Associated Person that would be required to be disclosed in a solicitation of proxies subject to Section 14 of the Exchange Act, the written consent of each Stockholder Nominee to being named in a proxy statement as a nominee and to serve if elected and a completed signed questionnaire, representation and agreement required by Section 3.4;

(iv) a description of all direct and indirect compensation and other material monetary agreements, arrangements and understandings during the past three years, and any other material relationships, between or among a Nominating Stockholder, Stockholder Associated Person or their respective associates, or others acting in concert therewith, including all information that would be required to be disclosed pursuant to Rule 404 promulgated under Regulation S-K if the Nominating Stockholder, Stockholder Associated Person or any person acting in concert therewith were the "registrant" for purposes of such rule and the Stockholder Nominee were a director or executive of such registrant;

(v) a representation as to whether the Nominating Stockholders intend (A) to deliver a proxy statement and form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve the nomination or (B) otherwise to solicit proxies from stockholders in support of such nomination; and

(vi) a representation that the Nominating Stockholders shall provide all other information and affirmations, updates and supplements required pursuant to these Bylaws.

(g) The Nominating Stockholders shall also provide any other information reasonably requested from time to time by the Corporation within ten (10) business days after each such request.

(h) The Nominating Stockholder shall affirm as true and correct the information provided to the Corporation in the Notice of Nomination or at the Corporation's request pursuant to Section 3.3(g) (and shall update or supplement such information as needed so that such information shall be true and correct) as of (i) the record date for the meeting, and (ii) the date that is ten (10) business days before the date of the meeting and, if applicable, before reconvening any adjournment or postponement thereof. Such affirmation, update and/or supplement must be delivered personally or mailed to, and received at the Office of the Corporation, addressed to the Secretary, by no later than (1) five (5) business days after the applicable date specified in clause (i) of the foregoing sentence (in the case of the affirmation, update and/or supplement required to be made as of those dates), and (2) seven (7) business days before the date for the meeting (in the case of the affirmation, update and/or supplement required to be made as of ten (10) business days before the meeting or reconvening any adjournment or postponement thereof).

(i) The person presiding over the meeting shall, if the facts warrant, determine and declare to the meeting that the nomination was not made in accordance with the procedures set forth in this Section 3.3. Any such defective nomination shall be disregarded.

(j) If the Nominating Stockholder (or a qualified representative of the Nominating Stockholder) does not appear at the applicable Stockholder meeting to nominate the Stockholder Nominees, such nomination shall be disregarded and such Stockholder Nominees shall not be qualified for election as Directors, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 3.3, to be considered a "qualified representative" of the Nominating Stockholder, a person must be a duly authorized officer, manager or partner of such Nominating Stockholder or must be authorized by a writing executed by such Nominating Stockholder or an electronic transmission delivered by such Nominating Stockholder to act for such Nominating Stockholder as proxy at the meeting of Stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of Stockholders.

(k) Nothing in this Section 3.3 shall be deemed to affect any rights of the holders of any series of preferred stock of the Corporation pursuant to any applicable provision of the Certificate of Incorporation.

3.4. Nominee Qualifications. Except for nominees nominated in accordance with the Stockholders Agreement and as otherwise provided by the Stockholders Agreement (as long as, in each case, such agreement is in effect), to be qualified to be a nominee for election or reelection as a Director, the nominee must deliver (in accordance with the time periods prescribed for delivery of a Notice of Nomination under Section 3.3 (in the case of a Stockholder Nominee)

or upon request of the Secretary from time to time (in the case of a person nominated by or at the direction of the Board or any committee thereof)) to the Secretary at the Office of the Corporation:

(a) a completed and signed written questionnaire (in the form provided by the Secretary) with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made;

(b) information as necessary to permit the Board to determine if such nominee (i) is independent under the applicable rules and listing standards of the principal national securities exchanges upon which the stock of the Corporation is listed or traded, any applicable rules of the SEC or any other regulatory body with jurisdiction over the Corporation, or any publicly disclosed standards used by the Board in determining and disclosing the independence of the Directors and Board committee members, (ii) is not or has not been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended from time to time, or (iii) is not a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding within the past ten (10) years ((i) through (iii) collectively, the "Independence Standards");

(c) a written representation and agreement (in the form provided by the Secretary) that such person (i) is not and will not become a party to (A) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person will act or vote as a Director on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (B) any Voting Commitment that could limit or interfere with such person's ability to comply with such person's fiduciary duties as a Director under applicable law, (ii) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a Director that has not been disclosed to the Corporation, (iii) will comply with all applicable publicly disclosed corporate governance, conflict of interest, confidentiality and stock ownership and trading and other policies and guidelines of the Corporation that are applicable to Directors and (iv) currently intends to serve as a Director for the full term for which he or she is standing for election; and

(d) such person's written consent to being named as a nominee for election as a Director and to serving as a Director if elected.

The Secretary shall provide any Stockholder the forms of the written questionnaire, representation and agreement referred to in this Section 3.4 upon written request therefor.

3.5. Newly Created Directorships and Vacancies. Subject to the rights of holders of any series of Preferred Stock to elect Directors under specific circumstances as set forth in any Preferred Stock Designation, any newly created directorships resulting from an increase in the authorized number of Directors and any vacancies occurring in the Board may be filled solely by a majority of the Directors then in office, although less than a quorum, or a sole remaining Director. A Director so elected shall be elected to hold office until the earlier of the expiration of the term of office of the Director whom he or she has replaced, a successor is elected and qualified

or the Director's earlier death, resignation, disqualification or removal. Subject to the rights of Stammtisch set forth in Section 3.7 and any votes or consents required pursuant to the Stockholders Agreement, when one or more Directors shall resign, effective at a future time, a majority of the Directors then in office, including those who have so resigned, shall have power to fill such vacancy or vacancies, the vote thereon to take effect when such resignation or resignations shall become effective, and each Director so chosen shall hold office as provided in this Section 3.5 in the filling of other vacancies.

3.6. Resignation. Any Director may resign at any time by notice given in writing or by electronic transmission to the Board, the Chairperson or the Secretary. Such resignation shall take effect at the time of receipt of such notice or at such later time, or such later time determined upon the happening of an event, as is therein specified.

3.7. Chairperson. The Board may elect a Chairperson. Notwithstanding the foregoing, for so long as Stammtisch beneficially owns in the aggregate (directly or indirectly) at least fifteen percent (15%) or more of the voting power of the then outstanding shares of capital stock of the Corporation then entitled to vote generally in the election of directors, the Chairperson may be designated by a majority of the directors nominated or designated for nomination by Stammtisch, provided, that the Chairperson shall initially be Paul Prager. The Chairperson must be a director and may an officer of the Corporation. Subject to the provisions of these Bylaws and the direction of the Board, the Chairperson shall perform all duties and have all powers which are commonly incident to the position of Chairperson or which are delegated to him or her by the Board, preside at all meetings of stockholders Board of Directors at which he or she is present and have such powers and perform such duties as the Board may from time to time prescribe. If the Chairperson is not present at a meeting of the Board, the Chairperson's designee shall preside at such meeting, or if the Chairperson has made no such designation or if the designee is not present at such meeting, a majority of the directors present at such meeting shall elect one of the directors present to so preside.

3.8. Regular Meetings and Special Meetings. Regular meetings of the Board may be held without notice at such time and at such place as shall from time to time be determined by resolution of the Board and publicized among all Directors. Special meetings of the Board may be held at such times and at such places, if any, as may be determined by (i) the Chairperson, (ii) the Secretary upon the written request of a majority of the Directors then in office, (iii) prior to the first date on which Stammtisch and Stammtisch Affiliates first cease to beneficially own in the aggregate (directly or indirectly) shares of Common Stock representing at least fifteen percent (15%) of the issued and outstanding capital stock of the Corporation entitled to vote generally on the election of directors, and if the Board then includes a director nominated or designated for nomination by Stammtisch, by any director nominated or designated by Stammtisch, or (iv) after the first date on which Stammtisch and Stammtisch Affiliates first cease to beneficially own in the aggregate (directly or indirectly) shares of capital stock of the Corporation representing at least fifteen percent (15%) of the issued and outstanding capital stock of the Corporation then entitled to vote for the election of directors, by written request of any two directors, and in each case shall be held at a place, if any, on the date and time as he, she or they shall fix, in each case, on at least twenty-four (24) hours' notice to each Director given by one of the means specified in Section 3.11 other than by mail or on at least three days' notice if given by mail. Any and all business may be transacted at a special meeting of the Board.

3.9. Telephone Meetings. Board or Board committee meetings may be held by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by a Director in a meeting pursuant to this Section 3.9 shall constitute presence in person at such meeting.

3.10. Adjourned Meetings. A majority of the Directors present at any meeting of the Board, including an adjourned meeting, whether or not a quorum is present, may adjourn and reconvene such meeting to another time and place. At least twenty-four (24) hours' notice of any adjourned meeting of the Board shall be given to each Director whether or not present at the time of the adjournment; provided, however, that notice of the adjourned meeting need not be given if (a) the adjournment is for twenty-four (24) hours or less and (b) the time, place, if any, and means of remote communication, if any, are announced at the meeting at which the adjournment is taken. Any business may be transacted at an adjourned meeting that might have been transacted at the meeting as originally called.

3.11. Notice Procedure. Subject to Sections 3.10 and 3.12, whenever notice is required to be given to any Director by applicable law, the Certificate of Incorporation or these Bylaws, such notice shall be deemed given effectively if given in person or by telephone, mail addressed to such Director at such Director's address as it appears on the records of the Corporation, telecopy or by electronic mail or other means of electronic transmission. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board need be specified in the notice of such meeting.

3.12. Waiver of Notice. Whenever the giving of any notice to Directors is required by applicable law, the Certificate of Incorporation or these Bylaws, a written waiver signed by the Director, or a waiver by electronic transmission by such Director, whether before or after such notice is required, shall be deemed equivalent to notice. Attendance by a Director at a meeting shall constitute a waiver of notice of such meeting except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business on the ground that the meeting was not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special Board or committee meeting need be specified in any waiver of notice.

3.13. Organization. At each meeting of the Board, the Chairperson or, in his or her absence, another Director selected by the Board shall preside. The Secretary shall act as secretary at each meeting of the Board. If the Secretary is absent from any meeting of the Board, the person presiding at the meeting may appoint any

person to act as secretary of the meeting.

3.14. Quorum of Directors. The presence of a majority of the total number of Directors then in office shall constitute a quorum for the transaction of business at any meeting of the Board; provided, however, that in no case shall a quorum consist of less than one-third of the total number of Directors that the Corporation would have if there were no vacancies on the Board. If a quorum shall not be present at any meeting of the Board of Directors, the directors present thereat may, to the fullest extent permitted by law, adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

3.15. Action by Majority Vote. Unless a different vote is required by express provision of an applicable law, the Certificate of Incorporation or these Bylaws, the vote of a majority of directors present at a meeting at which a quorum is present shall be the act of the Board.

3.16. Action Without Meeting. 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 Directors or members of such committee, as the case may be, consent thereto in writing or by electronic transmission, and the writings or electronic transmissions are filed with the minutes of proceedings of the Board or committee.

3.17. Compensation. The Board shall have authority to fix the compensation, including fees and expenses and equity compensation, of Directors for services to the Corporation in any capacity, including for attendance of meetings of the Board or participation on any committees of the Board. No such payment shall preclude any Director from serving the Corporation in any other capacity and receiving compensation.

3.18. Reliance on Books and Records. A member of the Board, or a member of any committee designated by the Board shall, in the performance of such member's duties, be fully protected in relying in good faith upon the records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees of the Board, or by any other person as to matters the member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

ARTICLE IV

COMMITTEES OF THE BOARD

The Board may designate one or more committees in accordance with Section 141(c) of the DGCL. Unless the Board provides otherwise, at all meetings of such committee, a majority of the then authorized number of members of the committee shall constitute a quorum for the transaction of business, and the vote of a majority of the members of the committee present at any meeting at which there is a quorum shall be the act of the committee. Each committee shall keep regular minutes of its meetings. Unless the Board provides otherwise, each committee designated by the Board may make, alter and repeal rules and procedures for the conduct of its business. In the absence of such rules and procedures each committee shall conduct its business in the same manner as the Board conducts its business pursuant to Article III.

ARTICLE V

OFFICERS

5.1. Positions; Election. The offices of the Corporation shall include a Chairperson, a President, a Secretary, a Treasurer, Vice Presidents and any other officers as the Board may elect from time to time, who shall exercise such powers and perform such duties as

shall be determined by the Board from time to time. Any number of offices may be held by the same person.

5.2. Term of Office. Each officer of the Corporation shall hold office until such officer's successor is elected and qualified or until such officer's earlier death, resignation or removal. Any officer may resign at any time upon written notice to the Corporation. Such resignation shall take effect at the time of receipt of such notice or at such later time, or at such later time determined upon the happening of an event, as is therein specified. The resignation of an officer shall be without prejudice to the contract rights of the Corporation, if any. Any officer may be removed at any time with or without cause by the Board. Any vacancy occurring in any office of the Corporation may be filled by the Board. The election or appointment of an officer shall not of itself create contract rights, and any resignation or removal of an officer shall be without prejudice to the contract rights, if any, of such officer, the Corporation or any other person.

5.3. President. The President shall have general supervision over the business of the Corporation and other duties incident to the office of President, and any other duties as may from time to time be assigned to the President by the Board and subject to the control of the Board in each case. The President may sign and execute in the name of the Corporation deeds, mortgages, bonds, contracts and other instruments, except in cases in which the signing and execution thereof shall be expressly delegated by the Board or by these Bylaws to some other officer or agent of the Corporation, or shall be required by applicable law otherwise to be signed or executed.

5.4. Secretary. The Secretary shall attend all meetings of the Board and of the Stockholders, record all the proceedings of the meetings of the Board and of the Stockholders in a book to be kept for that purpose and perform like duties for committees of the Board, when required. The Secretary shall give, or cause to be given, notice of all special meetings of the Board and all meetings of the Stockholders and perform such other duties as may be prescribed by the Board or by the President.

5.5. Treasurer. The Treasurer shall have charge and custody of, and be responsible for, all funds, securities and notes of the Corporation and, in general, perform all duties incident to the office of Treasurer of a corporation and such other duties as may from time to time be assigned to the Treasurer by the Board or the President.

5.6. Vice Presidents. The Corporation may have one or more Vice Presidents who shall have the responsibilities and duties assigned to such Vice President from time to time by the Board or the President.

5.7. Actions with Respect to Securities of Other Entities. All stock and other securities of other entities owned or held by the Corporation for itself, or for other parties in any capacity, shall be voted (including by written consent), and all proxies with respect thereto shall be executed, by the person or persons authorized to do so by resolution of the Board or, in the absence of such authorization, by the Chairperson, the President or the Secretary.

ARTICLE VI

INDEMNIFICATION

6.1. Right to Indemnification. The Corporation shall indemnify and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (a "Covered Person") who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (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 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 entity or enterprise, including service with respect to employee benefit plans, against all liability and loss suffered and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement (except for judgments, fines and amounts paid in settlement in any action or suit by or in the right of the Corporation to procure a judgment in its favor) actually and reasonably incurred by such Covered Person. Notwithstanding the preceding sentence, except as otherwise provided in Section 6.3, the Corporation shall be required to indemnify a Covered Person in connection with a Proceeding (or part thereof) commenced by such Covered Person only if the commencement of such Proceeding (or part thereof) by the Covered Person was authorized by the Board.

6.2. Prepayment of Expenses. To the extent not prohibited by applicable law, the Corporation shall pay the expenses (including attorneys' fees) incurred by a Covered Person in defending any Proceeding in advance of its final disposition; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking by the Covered Person to repay all amounts advanced if it should be ultimately determined that the Covered Person is not entitled to be indemnified under this Article VI or otherwise.

6.3. Claims. If a claim for indemnification or advancement of expenses under this Article VI is not paid in full within 30 days after a written claim therefor by the Covered Person has been received by the Corporation, the Covered Person may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim. In any such action the Corporation shall have the burden of proving that the Covered Person is not entitled to the requested indemnification or advancement of expenses under applicable law.

6.4. Nonexclusivity of Rights.

(a) The rights conferred on any Covered Person by this Article VI shall not be exclusive of any other rights that such Covered Person may have or hereafter acquire under any statute, provision of these Bylaws, the Certificate of Incorporation, agreement, vote of stockholders or disinterested directors or otherwise.

(b) As between the Corporation and any other person or entity (other than an entity directly or indirectly controlled by the Corporation) who provides indemnification to any Covered Persons for their service to, or on behalf of, the Corporation (collectively, the

"secondary indemnitors"), the Corporation: (i) shall be the full indemnitor of first resort in respect of indemnification or advancement of expenses in connection with any jointly indemnifiable claims (as defined below), pursuant to and in accordance with the terms of this Article VI, irrespective of any right of indemnification, advancement of expenses or other right of recovery any Covered Person may have from any secondary indemnitor or any right to insurance coverage that any Covered Person may have under any insurance policy issued to any secondary indemnitor (i.e., the Corporation's obligations to those Covered Persons are primary and any obligation of any secondary indemnitor, or any insurer of any secondary indemnitor, to advance expenses or to provide indemnification or insurance coverage for the same loss or liability incurred by those indemnitees is secondary to the Corporation's obligations); (ii) shall be required to advance the full amount of expenses incurred by any such Covered Person and shall be liable for the full amount of all liability and loss suffered by the indemnitee (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by the indemnitee in connection with the proceeding), without regard to any rights any such indemnitee may have against any secondary indemnitor or against any insurance carrier providing insurance coverage to that Covered Person under any insurance policy issued to a secondary indemnitor; and (iii) irrevocably waives, relinquishes and releases each secondary indemnitor from any and all claims against that secondary indemnitor for contribution, subrogation or any other recovery of any kind in respect those claims.

6.5. Other Sources. The Corporation's obligation, if any, to indemnify or to advance expenses to any Covered Person who was or is serving at its request as a director, officer, employee or agent of another entity or enterprise shall be reduced by any amount such Covered Person may collect as indemnification or advancement of expenses from such other entity or enterprise.

6.6. Amendment or Repeal. Any amendment or repeal of the foregoing provisions of this Article VI shall not adversely affect any right or protection hereunder of any Covered Person in respect of any act or omission occurring prior to the time of such amendment or repeal.

6.7. Other Indemnification and Prepayment of Expenses. This Article VI shall not limit the right of the Corporation, to the extent and in the manner permitted by applicable law, to indemnify and to advance expenses to persons other than Covered Persons when and as authorized by appropriate corporate action.

ARTICLE VII

EXCLUSIVE FORUM

7.1. Exclusive Forum for Internal Corporate Claims. Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Corporation, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee, agent or stockholder of the Corporation to the Corporation or the Corporation's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL, the Certificate of Incorporation or these Bylaws, or (d) any action asserting a claim governed by the internal affairs

doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery of the State of Delaware lacks jurisdiction over such action or proceeding, then another court of the State of Delaware or, if no court of the State of Delaware has jurisdiction, then the United States District Court for the District of Delaware).)

7.2. Exclusive Forum for Securities Act Claims. 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 exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act. For the avoidance of doubt, the provisions of this Article VII shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended, or any other claim for which the federal courts have exclusive jurisdiction

ARTICLE VIII

GENERAL PROVISIONS

8.1. Certificates Representing Shares. The shares of stock of the Corporation may be certificated or uncertificated, as provided under the General Corporation Law of the State of Delaware. If shares are represented by certificates (if any) such certificates shall be in the form approved by the Board. Any or all such signatures may be facsimiles. Although any officer, transfer agent or registrar whose manual or facsimile signature is affixed to such a certificate ceases to be such officer, transfer agent or registrar before such certificate has been issued, it may nevertheless be issued by the Corporation with the same effect as if such officer, transfer agent or registrar were still such at the date of its issue.

8.2. Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agents and registry offices or agents at such place or places as may be determined from time to time by the Board. Upon the receipt of proper transfer instructions from the registered owner of uncertificated shares, such shares shall be canceled, issuance of new equivalent uncertificated shares or certificated shares shall be recorded on the books and records of the Corporation. The Board shall have authority to make such rules and regulations not inconsistent with law, the Certificate of Incorporation or these Bylaws, as it deems expedient concerning the issuance, transfer and registration of certificates for shares and the shares represented thereby and of uncertificated shares.

8.3. Lost, Stolen or Destroyed Certificates. The Corporation may issue a new certificate of stock 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 his 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.

8.4. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed.

electronic networks or databases); provided that the records so kept can be converted into clearly legible paper form within a reasonable time, and, with respect to the stock ledger, that the records so kept (i) can be used to prepare the list of stockholders specified in Sections 219 and 220 of the DGCL, (ii) record the information specified in Sections 156, 159, 217(a) and 218 of the DGCL and (iii) record transfers of stock as governed by Article 8 of the Uniform Commercial Code as enacted in the State of Delaware, 6 *Del. C.* §§8-101 *et seq.* The Corporation shall convert any records so kept into clearly legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL.

8.5. Seal. The Corporation may have a corporate seal, which shall be in such form as may be approved from time to time by the Board. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or otherwise reproduced.

8.6. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board.

8.7. Time Periods. In applying any provision of these Bylaws which require that an act be done or not done a specified number of days prior to an event or that an act be done during a period of a specified number of days prior to an event, calendar days shall be used unless otherwise specified, the day of the doing of the act shall be excluded, and the day of the event shall be included.

8.8. Amendments. Subject to any votes or consents required under the Stockholders Agreement or Certificate of Incorporation, these Bylaws may be amended or repealed and new Bylaws may be adopted by the Board; provided, however, that for so long as Stammtisch beneficially owns at least fifteen percent (15%) in the aggregate of the issued and outstanding voting securities of the Corporation, the provisions of Sections 2.2, 2.3, 3.7 hereof and this Section 8.8 may not be amended without prior written consent of Stammtisch.

8.9. Conflict with Applicable Law, Certificate of Incorporation or Stockholders Agreement. These Bylaws are adopted subject to any applicable law and the Certificate of Incorporation and Stockholders Agreement. Whenever these Bylaws may conflict with any applicable law or the Certificate of Incorporation or Stockholders Agreement, such conflict shall be resolved in favor of such law or the Stockholders Agreement and Certificate of Incorporation.

EXHIBIT 99.1

FOR IMMEDIATE RELEASE

TeraWulf Inc. Launches as Publicly Traded Bitcoin Mining Company with a Fully Integrated, Environmentally Clean Platform

Completes Business Combination and Expected to Begin Common Stock Trading on Nasdaq Under Ticker Symbol "WULF"

EASTON, Maryland – December 13, 2021 – TeraWulf Inc. (Nasdaq: WULF) ("TeraWulf"), which was formed to own and operate fully integrated environmentally clean bitcoin mining facilities in the United States, today announced that it has completed its previously announced business combination with IKONICS Corporation ("IKONICS") (formerly NASDAQ: IKNX). The combined company is now named "TeraWulf Inc." and its common stock is expected to commence trading on the Nasdaq Stock Market LLC on December 14, 2021 under the ticker symbol "WULF."

TeraWulf previously announced that it raised approximately $200 million in debt and equity financing from a group of leading institutional and individual investors. The additional capital raised is expected to enable TeraWulf to achieve 6 exahash per second, or 200 megawatts, of mining capacity by the second half of 2022. In addition, TeraWulf expects to have 800 megawatts of mining capacity deployed by 2025, enabling over 23 exahash per second of expected hashrate.

"Completing the business combination takes us one step closer to achieving our mission of generating environmentally sustainable bitcoin at industrial scale in the United States while using over 90% zero-carbon energy," said Paul Prager, Chief Executive Officer and chair of the board of TeraWulf. "As TeraWulf begins its journey as a publicly traded company, we believe that our energy infrastructure expertise and our core focus on ESG set us apart from our competitors and tie directly to our business success. TeraWulf intends to utilize cost-efficient, reliable and sustainable energy from nuclear, hydro and solar sources to form a fully-integrated, environmentally clean platform with attractive economics. We look forward to creating substantial value for our shareholders through a new paradigm in the world of cryptocurrency mining."

Nazar Khan, Chief Operating Officer and Chief Technology Officer of TeraWulf, added, "Energy infrastructure is at the core of bitcoin mining, and our team brings a proven track record of developing industrial-scale energy projects. Bitcoin mining can be symbiotic with the modern grid, serving a battery function with mining machines ramping up or down depending on conditions. This balances out the supply and demand for renewable energy on the local grid, while converting local underutilized power generated by renewable sources into bitcoin, a global asset with unlimited shelf life. We look forward to leveraging our expertise to contribute to the acceleration of our electrical grid's transition to a zero-carbon future."

Paul, Weiss, Rifkind, Wharton & Garrison LLP served as legal advisor and Moelis & Company LLC served as financial advisor to TeraWulf. Faegre Drinker Biddle & Reath LLP served as legal advisor and Northland Securities, Inc. served as financial advisor to IKONICS.

A Current Report on Form 8-K containing more detailed information regarding the business combination will be filed by TeraWulf with the Securities and Exchange Commission. The business combination was approved by IKONICS's stockholders at a special meeting of stockholders held on December 10, 2021.

About TeraWulf

TeraWulf was formed to own and operate fully integrated environmentally clean bitcoin mining facilities in the United States. TeraWulf will generate domestically produced bitcoin powered by nuclear, hydro and solar energy.

For more information on TeraWulf, please visit www.TeraWulf.com or follow @TeraWulfInc on Twitter.

Forward-Looking Statements

This press release contains forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, as amended. Such forward-looking statements include statements concerning anticipated future events and expectations that are not historical facts. All statements, other than statements of historical fact, are statements that could be deemed forward-looking statements. In addition, forward-looking statements are typically identified by words such as "plan," "believe," "expect," "anticipate," "intend," "outlook," "estimate," "forecast," "project," "continue," "could," "may," "might," "possible," "potential," "predict," "should," "would" and other similar words and expressions, although the absence of these words or expressions does not mean that a statement is not forward-looking. Forward-looking statements are based on the current expectations and beliefs of TeraWulf's management and are inherently subject to a number of factors, risks, uncertainties and assumptions and their potential effects. There can be no assurance that future developments will be those that have been anticipated. Actual results may vary materially from those expressed or implied by forward-looking statements based on a number of factors, risks, uncertainties and assumptions, including, among others: (1) conditions in the cryptocurrency mining industry, including fluctuation in the market pricing of bitcoin and other cryptocurrencies, and the economics of cryptocurrency mining, including as to variables or factors affecting the cost, efficiency and profitability of cryptocurrency mining; (2) competition among the various providers of data mining services; (3) changes in applicable laws, regulations and/or permits affecting TeraWulf's operations or the industries in which it operates, including regulation regarding power generation, cryptocurrency usage and/or cryptocurrency mining; (4) the ability to implement certain business objectives and to timely and cost-effectively execute integrated projects; (5) failure to obtain adequate financing on a timely basis and/or on acceptable terms with regard to growth strategies or operations; (6) loss of public confidence in bitcoin or other cryptocurrencies and the potential for cryptocurrency market manipulation; (7) the potential of cybercrime, money-laundering, malware infections and phishing and/or loss and interference as a result of equipment malfunction or break-down, physical disaster, data security breach, computer malfunction or sabotage (and the costs associated with any of the foregoing); (8) the availability, delivery schedule and cost of equipment necessary to maintain and grow the business and operations of TeraWulf, including mining equipment and equipment meeting the technical or other specifications required to achieve its growth strategy; (9) employment workforce factors, including the loss of key employees; (10) litigation relating to TeraWulf, IKONICS and/or the business combination; and (11) the ability to recognize the anticipated objectives and benefits of the business combination. Potential investors, stockholders and other readers are cautioned not to place undue reliance on these forward-looking statements, which speak only as of the date on which they were made. TeraWulf does not assume any obligation to publicly update any forward-looking statement after it was made, whether as a result of new information, future events or otherwise, except as required by law or regulation.

Contacts

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