



# Bylaws of EMerge Alliance

(A California Nonprofit Mutual Benefit Corporation)

## ARTICLE 1: DEFINITIONS

**SECTION 1.1** “Affiliate” or “Affiliates” means an entity that directly or indirectly controls another entity, or is controlled, or is under common control with another entity. For purposes of this definition, control shall mean beneficial ownership of more than fifty percent (50%) of the voting power or equity of an entity.

**SECTION 1.2** “Governing Member” means all Members of the Corporation who so qualify in accordance with the provisions of Articles 12 and 14.2, below.

**SECTION 1.3** “Corporation” means EMerge Alliance, a nonprofit, mutual benefit corporation organized under the laws of the State of California.

**SECTION 1.4** “Member” means all Governing Members and Participants who have qualified for their respective classification according to the provision of these Bylaws and who remain in good standing. Notwithstanding the foregoing, only Governing Members shall be statutory members as that term is defined in Section 5056 of the California Corporations Code or any successor statute.

**SECTION 1.5** “Participant” shall mean those categories of non statutory member participants set forth in Section 14.2, and Affiliates thereof, who have qualified for the respective classification according to the provision of these Bylaws and who remain in good standing.

**SECTION 1.6** “Director” means a member of the Board of Directors, whose duties and responsibilities are set forth in Section 4.3 below. The term “Director” shall not designate Executive Director.

**SECTION 1.7** “Super Majority” means two-thirds of the quorum present at a duly convened meeting of Members or Directors, as the case may be, but never less than what would represent a simple majority of the entire voting class.

**SECTION 1.8** “Absolute Super Majority” means two-thirds of the total number of Members or Directors, as the case may be.

## **ARTICLE 2: OFFICES**

### **SECTION 2.1 PRINCIPAL OFFICE**

The principal office of the Corporation shall be located at 2400 Camino Ramon, Suite 375, San Ramon, CA 94583.

### **SECTION 2.2 CHANGE OF ADDRESS**

The designation of the Corporation's principal office may be changed from time to time by the Board of Directors.

### **SECTION 2.3 OTHER OFFICES**

The Corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

### **SECTION 2.4 COMPLIANCE WITH ANTITRUST LAWS**

The Corporation and its Members are committed to fostering open competition in the development and deployment of products. The Members of the Corporation understand that in certain lines of business they are direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any state, federal or international antitrust laws and regulations.

Without limiting the generality of the foregoing, the Members of the Corporation acknowledge that the Corporation prohibits any discussion that may be construed as a violation of antitrust laws including, without limitation, any discussion on costs, prices, quantity or quality of production levels, methods or channels of distribution, markets, customers or any other topic that may be construed as a violation of antitrust laws. Accordingly, each Member will counsel its representatives on the importance of limiting the scope of their discussions to the topics which relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

## **ARTICLE 3: NONPROFIT PURPOSES**

### **SECTION 3.1 INTERNAL REVENUE CODE SECTION 501(c)(6) PURPOSES**

Subject to the limitations stated in the Articles of Incorporation or these Bylaws, the Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(6) of the Internal Revenue Code (the "**Code**"), including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(6) of the Code. The provisions of this Section 3.1 may only be altered, amended, or repealed by the unanimous approval of all Governing Members of the Corporation.

## **SECTION 3.2 SPECIFIC OBJECTIVES AND PURPOSES**

EMerge Alliance is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law of California. The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under such law. Without limiting the generality of the foregoing, the specific purpose of the Corporation is to create specifications for the building industry; drive interoperability between products within the building industry; develop and manage certification, compliance, interoperability and user education programs for the building industry; facilitate information exchange with related entities; and other relevant activities.

## **ARTICLE 4: BOARD OF DIRECTORS**

### **SECTION 4.1 COMPOSITION OF BOARD**

The Board of Directors shall consist of at least three (3) but not more than fifteen (15) members unless and until changed by amendment to these bylaws. Each of the Governing Members in good standing shall be entitled to appoint one (1) representative to the Board of Directors. The qualifications for Director are that the individual is an employee of and is nominated by and serves as a representative of a Governing Member in good standing of the Corporation, and that the individual agrees to accept the duties or responsibilities imposed upon members of the Board of Directors as established by the Board of Directors from time to time. Unless the Governing Member notifies the Corporation that only one designated individual may act as its representative on the Board of Directors, the person acting as such Member organization's representative in membership activities shall automatically be appointed as the Director representing that Member organization on the Board of Directors. If the Governing Member has appointed both a principal representative and one or more alternate representatives, the principal representative shall be the Director representing such Member organization for all matters requiring written consent. If the principal representative of a Governing Member is unavailable to attend a meeting, the alternate representative of the Governing Member may attend the board meeting in his or her place and act as the Director representing such Member organization.

### **SECTION 4.2 POWERS**

Subject to the provisions of the California Nonprofit Corporation Law and any limitations in the Articles of Incorporation and these Bylaws relating to action required or permitted to be taken or approved by the Members of this Corporation, if any, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

### **SECTION 4.3 DUTIES**

It shall be the duty of the members of the Board of Directors to:

A. Perform in good faith any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;

B. Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;

C. Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;

D. Meet at such times and places as required by these Bylaws;

E. Register their addresses with the Executive Officer, or if none, the Secretary of the Corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof;

F. Establish, disband and determine rules and procedures for Committees, including Work Groups (as such terms are described in Article 6), as appropriate to conduct the work of the Corporation;

G. Approve or prohibit any public statement, press release or similar public materials regarding or relating to the Corporation prior to making such materials public on behalf of the Corporation;

H. Elect annually a Chairman to preside over the Board of Directors' meetings or to take such action as may be agreed upon by the Board of Directors;

I. Approve the Corporation's annual budget and provide oversight of the handling of the Corporation's finances. If the annual budget is not approved at the start of each calendar year, the Corporation shall operate based on the prior yearly budget, to the extent practical, until an annual budget is approved;

J. Establish procedures for the licensing and use of certain intellectual property rights of the Corporation to the Members;

K. Establish or revise membership classes and the rights and privileges of the various classes of Members, provided that dues, fees and assessments shall be equal for all members of each class except that entity and individual members of a class may be charged dues, fees and assessments that vary but are equal for all entity members of the class and individual members of the class, respectively;

L. Make a yearly evaluation of the Corporation's fulfillment of its purpose; and

M. Perform such other duties as are customary for the directors of a Nonprofit Business League organized under Section 501(c)(6) of the Code.

#### **SECTION 4.5 TERM OF OFFICE**

Each Director shall serve until the appointment of his or her successor unless such Director earlier resigns or is removed pursuant to the terms of these Bylaws.

#### **SECTION 4.6 COMPENSATION**

Members of the Board of Directors shall serve without compensation; provided, however, that members may, upon resolution of the Board of Directors, be reimbursed for expenses incurred by members while performing Board duties.

Nothing herein contained shall be construed to preclude any member of the Board of Directors from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefore so long as such compensation is approved by a majority of Disinterested members of the Board of Directors. As used in these Bylaws, the term “**Disinterested members of the Board of Directors**” shall mean members not seeking compensation for such services, or whose Member organization is not seeking compensation for such services, or members not subject to a vote for removal from the Board of Directors, or whose Member organization is not the subject of a vote for termination of membership.

#### **SECTION 4.7 PLACE OF MEETINGS**

The Board of Directors’ meetings shall be held at the places and times set forth in notices pursuant to the terms of these Bylaws. Meetings may be held in person or by any combination of audio, document, or videoconferencing techniques as provided in Section 4.13.

#### **SECTION 4.8 ANNUAL MEETINGS**

Annual meetings of the Board of Directors shall be held each year on or about the anniversary of the organizational meeting of the Board of Directors and in conjunction with the annual meeting of Governing Members.

#### **SECTION 4.9 PERIODIC AND SPECIAL MEETINGS**

The Board of Directors may schedule regular quarterly or other periodic meetings. Special meetings of the Board of Directors may be called by any three (3) members of the Board of Directors.

#### **SECTION 4.10 NOTICE OF MEETINGS**

Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:

A. Annual and Regular Meetings. The Executive Director, or if none, the Chairman of the Corporation shall give at least thirty (30) days’ prior notice to each member of the Board of Directors.

B. Special Meetings. The Executive Director, or if none, the Chairman of the Corporation shall give at least fourteen (14) days' prior notice to each member of the Board of Directors.

The primary means for the provision of notice shall be via electronic mail and first class mail simultaneously to the members of the Board of Directors at the address for that member as appears on the records of the Corporation. As notification is to be provided by first class mail, such notice shall be deemed to be delivered upon deposit in the mail addressed to the member of the Board of Directors at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by telephone, facsimile, or other electronic means; provided, however, in the case of facsimile notification, the member of the Board of Directors to be contacted shall acknowledge personal receipt of the facsimile notice by a return facsimile or electronic message or telephone call within three (3) working days of the first notification.

#### **SECTION 4.11 QUORUM FOR MEETINGS**

A majority of the members of the Board of Directors shall constitute a quorum for the transaction of business. A majority of the members of the Board of Director present, whether or not a quorum is present, may adjourn the meeting to another time and place. Notice of the time and place of the adjourned meeting need not be given unless the original meeting is adjourned for more than 24 hours. If the original meeting is adjourned for more than 24 hours, notice of any adjournment to another time and place shall be given, before the time of the adjourned meeting, to the directors who were not present at the time of the adjournment.

#### **SECTION 4.12 BOARD OF DIRECTORS ACTION**

Unless the Articles of Incorporation, these Bylaws, the Membership Agreement or the provisions of the California Nonprofit Mutual Benefit Corporation Law otherwise require a greater voting percentage or different rules for approval of a matter by the Board of Directors, every act or decision shall be done or made by a simple majority of the members of the Board of Directors who vote for or against the action (abstentions shall not be included in calculating the simple majority) at a meeting duly held at which a quorum is present and shall be deemed to be the act of the Board of Directors.

Unless otherwise required by law, the following actions shall require approval of an Absolute Super Majority of the Board of Directors:

- A. Admission of a Governing Member;
- B. Formation of Committees and Working Groups;
- C. Approval of all specification and certification programs and logos;
- D. Adoption and modification of any Intellectual Property Policy;
- E. Amendment of these Bylaws;

- F. Expulsion of a Member;
- G. Removal of any Director; and
- H. Approval of dissolution of the Corporation.

#### **SECTION 4.13 CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the Chairperson of the Board of Directors, or in his or her absence, by an acting Chairperson chosen by a majority of the members of the Board of Directors present at that meeting. The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, provided that, in his or her absence, the Chairperson shall appoint another person to act as secretary of the Meeting.

To the extent permitted by applicable law, a member of the Board of Directors may designate an alternate representative from the same organization to attend a Board of Directors' meeting as an observer when that member of the Board of Directors is unable to attend a meeting. Said representative may vote on behalf of the absent member of the Board of Directors.

Meetings shall be governed by such procedures as may be approved from time to time by the Board of Directors, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with provisions of law. From time to time, the Board of Directors may elect to institute a policy on rules of conduct. Where practical, the Board of Directors will model its procedures and actions on *Robert's Rules of Order*.

Members of the Board of Directors may participate in a regular or special meeting through use of conference telephone, videoconference, or similar communications, so long as all people participating in such meeting can hear one another during such meeting. Participation in a meeting pursuant to this Section 4.13 constitutes presence in person at such meeting.

#### **SECTION 4.14 VACANCIES, RESIGNATIONS**

Vacancies on the Board of Directors shall exist (1) upon the death or resignation of any member of the Board of Directors; (2) whenever the number of authorized members of the Board of Directors is increased by the Board of Directors by the amendment of these bylaws; (3) upon the declaration by resolution of the Board of Directors of vacancy in the office of a Director who has been declared of unsound mind by an order of court or convicted of a felony, or, if the Corporation holds assets in charitable trust, has been found by a final order or judgment of any court to have breached a duty arising under Section 7238 of the California Corporations Code; (4) upon the vote of an Absolute Super Majority of the Governing Members or the vote of an Absolute Super Majority of the Board of Directors to remove any member of the Board of Directors upon cause; (5) whenever a member of the Board of Directors resigns from or is terminated from employment by such member of the Board of Directors' Member organization; or (6) upon the resignation or removal of a Governing Member who nominated such director, in which case the director will be deemed to have resigned.

Any member of the Board of Directors may resign effective upon giving written notice to the Chairman, the Secretary, or the Board of Directors, unless the notice specifies a later time for

the effectiveness of such resignation. Except as otherwise herein provided, a member of the Board of Directors shall be conclusively deemed to resign if the Director's employment with the Member organization with which he or she was employed on appointment to the Board of Directors is for any reason terminated. No member of the Board of Directors may resign if the Corporation would then be left without a duly elected member of the Board of Directors in charge of its affairs, except upon notice to the Attorney General or other appropriate agency of the State of California.

Notwithstanding the provisions of Section 4.12, removal of a member of the Board of Directors without cause shall require a unanimous vote of all Disinterested members of the Board of Directors (as defined in Section 4.6, above). A member of the Board of Directors removed from office shall be deemed terminated for the purposes of this Section 4.14.

If the Member organization represented by the director whose resignation or removal caused the vacancy continues to be a Member organization in good standing, then the vacancy shall be filled by such Member organization. If a member of the Board of Directors resigns or is not replaced because the Member organization he or she represents loses or ceases to maintain its Membership in good standing and the membership of such Member organization is cancelled, or if such Member organization declines to appoint a member of the Board of Directors and there is no person acting as the Member's representative in membership activities who has automatically been appointed as the Director representing that Member organization on the Board of Directors, then the Board of Directors will automatically be reduced by one.

In the event that two (2) or more Governing Members are merged or a Governing Member is acquired by another Governing Member, the resulting or acquiring Governing Member organization shall designate which of the members of the Board of Directors is to remain on the Board of Directors and the other member or members of the Board of Directors representing the organizations party of the transaction shall be deemed to have resigned, and the Board of Directors will be automatically reduced by the number of such director or directors representing the organizations deemed to have resigned.

If at any time a Governing Member organization is suspended for nonpayment of dues pursuant to Section 12.4, the rights of the member of the Board of Directors representing such Member organization shall also be suspended and such member of the Board of Directors shall not be entitled to attend Board meetings or otherwise take action as a Director. During the time of such suspension, the Board of Directors will automatically be reduced by one.

#### **SECTION 4.15 NONLIABILITY OF MEMBERS OF THE BOARD OF DIRECTORS**

The members of the Board of Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **SECTION 4.16 INDEMNIFICATION BY THE CORPORATION OF MEMBERS OF THE BOARD OF DIRECTORS AND OFFICERS**

To the fullest extent not prohibited by the California Nonprofit Corporation Act, as it exists on the date hereof or is hereafter amended, the Corporation shall indemnify any person who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the Corporation), by reason of the fact that the person is or was a member of the Board of Directors of the Corporation. Notwithstanding the foregoing, no person shall be indemnified for his or her willful misconduct.

This Section 4.16 shall not be deemed exclusive of any other provisions or insurance for the indemnification of members of the Board of Directors, officers, employees, or agents of the Corporation that may be included in any statute, bylaw, agreement, resolution of Governing Members or members of the Board of Directors or otherwise, both as to action in any official capacity and action in any other capacity while holding office, or while an employee or agent of the Corporation.

#### **SECTION 4.17 CONFLICTS OF INTERESTS**

No contract or other transaction between (1) the Corporation and one or more members of the Board of Directors or between the Corporation and any domestic or foreign corporation, firm or association in which one or more of the members of the Board of Directors has a material financial interest or by which such member of the Board of Directors is employed, or (2) between the Corporation and any corporation, business corporation or association of which one or more of its Directors are directors shall be either void or voidable because such Director or Directors or such other corporation, business corporation, firm or association are parties or because such Director or Directors are present at the meeting which authorizes, approves or ratifies that contract or transaction if the material facts as to the transaction and as to such Director's interest are fully disclosed or known to the members of the Board of Directors and such contract or transaction is authorized, approved or ratified in good faith by action of the Disinterested Directors and the contract or transaction is just and reasonable as to the Corporation at the time it is authorized, approved or ratified.

#### **SECTION 4.18 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any agent of the Corporation (including a member of the Board of Directors, officer, employee or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Articles of Incorporation, these Bylaws or provisions of law.

## **SECTION 4.19 BOARD OF DIRECTORS ACTION WITHOUT A MEETING**

With the exception of changes to these Bylaws, any action that the Board of Directors is required or permitted to take may be taken without a meeting if the greater of (1) a Super Majority of all members of the Board of Directors or (2) any greater vote required by these bylaws or California law consent in writing to that action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board of Directors. All consents shall be filed with the minutes of the proceedings of the Board of Directors.

### **ARTICLE 5: OFFICERS**

## **SECTION 5.1 DESIGNATION OF OFFICERS**

The officers of the Corporation shall be a Chairman, one or more Vice Chairmen, a Secretary, and a Treasurer. The Corporation may have an Executive Director with the duties set forth in Section 5.9. The Corporation may also have one or more additional Assistant Secretaries, Assistant Treasurers, and other such officers with such titles as may be determined from time to time by the Board of Directors. With the exception of the Chairman, Vice Chairmen, Secretary and Treasurer and any officers who are also members of the Board of Directors, no officer need be an employee of a Member (or a contract representative of a Member with authority to act on the Member's behalf within the Corporation).

## **SECTION 5.2 ELECTION AND TERM OF OFFICE**

Each of the officers shall be elected by majority vote by the Board of Directors, and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first. Elections shall be held by secret ballot. Ties will be resolved by a runoff vote of the Governing Members.

## **SECTION 5.3 REMOVAL AND RESIGNATION**

The Board of Directors may remove any officer, either with or without cause, at any time by a Super Majority vote. An officer who is also an employee of a Member organization shall automatically be removed if the employer of the officer terminates its position as a Member in the Corporation, or if the officer's employment by the Member organization with which he or she was employed at time of appointment, is terminated for any reason. Any officer may resign at any time by giving written notice to the Board of Directors or to the Chairman, or Secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section 5.3 shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board of Directors relating to the employment of any officer of the Corporation.

## **SECTION 5.4 VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by a designate from the Member organization who employs or employed the departing officer, or should no such organization remain a Member, or if the officer is not employed by a Member, then the vacancy shall be filled by the Board of Directors.

In the event of a vacancy in any office other than that of Chairman, such vacancy may be filled temporarily by appointment by the Chairman until such time as the vacancy is filled. Vacancies occurring in offices of officers appointed at the discretion of the Board of Directors may or may not be filled as the Board of Directors shall determine.

#### **SECTION 5.5 DUTIES OF CHAIRMAN**

The Chairman shall, subject to the control of the Board of Directors, supervise the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors.

Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, the Chairman shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

#### **SECTION 5.6 DUTIES OF VICE CHAIRMEN**

One or more Vice Chairmen shall be elected by the Board of Directors and shall be designated with titles such as "First Vice Chairman," and "Second Vice Chairman." The Vice Chairman (or if more than one Vice Chairman, the First Vice Chairman, if available, otherwise the Second Vice Chairman, if available, and so forth in descending order) shall in the absence or disability of the Chairman, perform all of the duties of the Chairman, and when so acting shall have all of the powers of the Chairman and be subject to all of the restrictions upon the Chairman. Each Vice Chairman shall also have such other powers and perform such other duties as from time to time may be prescribed for him or her by the Board of Directors.

#### **SECTION 5.7 DUTIES OF SECRETARY**

The Secretary shall:

Certify and keep at the principal office of the Corporation the original, or a copy, of the Articles of Incorporation, these Bylaws and any amendments to either document.

Keep at the principal office of the Corporation or at such other place as the Board of Directors may determine, a book of minutes of all meetings of the Board of Directors, and, if applicable, meetings of committees of the Board of Directors and of Members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.

See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.

Be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these Bylaws, to duly executed documents of the Corporation.

Keep at the principal office of the Corporation a membership book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased.

Exhibit at all reasonable times to any Governing Member of the Corporation, or to the Governing Member's agent or attorney, on request therefore, the Articles of Incorporation, the Bylaws, the membership book, and the minutes of the proceedings of the Board of Directors of the Corporation.

In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

## **SECTION 5.8 DUTIES OF TREASURER**

The Treasurer shall:

Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.

Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.

Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.

Exhibit at all reasonable times the books of account and financial records to any member of the Board of Directors of the Corporation, or to his or her agent or attorney, on request therefore.

Render to the Chairman and Board of Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.

Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

## **SECTION 5.9 EXECUTIVE DIRECTOR**

The Executive Director of the Corporation shall perform such undertakings as are necessary to manage the day-to-day needs of the Corporation and to further the Corporation's strategic objectives and purposes, including:

- A. Scheduling and setting up meetings.
- B. Facilitating communication between Members, including providing timely notices of meetings.
- C. Acting as the business liaison to other consortiums or associations with which the Corporation may choose to associate; provided, however, that the Board of Directors may designate other such and additional liaisons as it deems appropriate.
- D. Providing Members with timely minutes, summaries and other reports with respect to the activities of the Corporation.
- E. Receiving and processing Membership Agreements.

In general, performing all duties incident to the office of Executive Director and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors. The term "Executive Director" shall not designate a member of the Board of Directors or the Board of Directors of the Corporation.

The Executive Director may engage third parties to undertake such activities, provided that the Executive Director enters into appropriate contracts protective of the Corporation, and ensures compliance with terms and conditions of this Agreement including confidentiality obligations.

## **SECTION 5.10 COMPENSATION**

With the exception of the Executive Director, whose services may be provided pursuant to a consulting and services agreement between the Corporation and an outside contractor, officers shall serve without compensation, unless the Board of Directors authorizes compensation; provided, however, that officers may, upon resolution of the Board of Directors, be reimbursed for expenses incurred by members while performing Board duties.

Nothing herein contained shall be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise, and receiving compensation therefore as long as such compensation is approved by a majority of Disinterested members of the Board of Directors as defined in Section 4.6, above.

## **ARTICLE 6: COMMITTEES**

### **SECTION 6.1 COMMITTEES AND WORK GROUPS**

The Corporation shall have such Committees as may from time to time be designated upon vote of the Board of Directors. The Board of Directors shall not be deemed a Committee in this context. The various Committees may form various subcommittees which shall be referred to as “**Work Groups.**” The Board of Directors shall appoint the chairperson of each Committee, including replacements for chairpersons from among the Members. The primary purpose of the Committees and Work Groups shall be to fulfill the limited purposes of the Corporation.

### **SECTION 6.2 MEETINGS AND ACTION OF COMMITTEES**

Meetings and action of the Committees shall be governed by, noticed, held and taken in accordance with such Committee Procedures as the Board of Directors may adopt. The Board of Directors from time to time may amend such Committee Procedures, via action of the Board of Directors. Upon establishment of a Committee, the Committee may, through its chairperson, propose Committee Specific Procedures, for adoption via action of the Board of Directors. Committee Specific Procedures not otherwise incorporated into the general Committee Procedures adopted by the Board of Directors shall apply only to the Committee proposing such procedures. The notice of meetings of the Committees and the governance thereof shall be subject to the Committee Procedures or Committee Specific Procedures adopted by the Board of Directors. Where practical, the Committees will model their procedures and actions on *Robert’s Rules of Order*. Each Committee shall elect a secretary or other person to document and record the Committee’s activities. Representatives to the Committees shall be subject to the removal by action of the Board of Directors. Governing Members shall be granted voting rights in Committees. Participating Members, General Members and Corresponding Members (each as defined in Section 14.4 below), may be granted access to Committee meetings upon approval of the Board of Directors but shall only be permitted to vote at the Committee meetings if and to the extent that the Board of Directors grants them voting rights.

## **ARTICLE 7: EXECUTION OF INSTRUMENTS, DEPOSITS, AND FUNDS**

### **SECTION 7.1 EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

## **SECTION 7.2 CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

## **SECTION 7.3 DEPOSITS**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

# **ARTICLE 8: CORPORATE RECORDS AND REPORTS**

## **SECTION 8.1 MAINTENANCE OF CORPORATE RECORDS**

The Corporation shall keep at its principal office:

A. Minutes of all meetings of the Board of Directors, all meetings of Committees of the Board of Directors, minutes of all meetings of any Work Group, and all meetings of Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies;

B. Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;

C. A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership; and

D. A copy of the Corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the Members of the Corporation at all reasonable times during office hours.

## **SECTION 8.2 INSPECTION RIGHTS**

All Members shall have the absolute right at any reasonable time during office hours to inspect and copy the Corporation's Articles of Incorporation and Bylaws as amended to date. Every Governing Member and Director shall have the absolute right at any reasonable time, at the office of the Corporation, to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation. Members and Directors shall have such other rights to inspect the books, records and properties of this Corporation as may be

required under the Articles of Incorporation, other provisions of these Bylaws, and provisions of law.

### **SECTION 8.3 RIGHT TO COPY AND MAKE EXTRACTS**

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

### **SECTION 8.4 PERIODIC REPORT**

The Board of Directors shall cause all annual and periodic report required under the laws of the State of California, including the annual report pursuant to Section 8322 of the California Corporations Code, to be prepared and delivered to an office of the State of California or to the Members, of this Corporation, if any, to be so prepared and delivered within the time limits set by law.

## **ARTICLE 9: SECTION 501(c)(6) TAX EXEMPTION PROVISIONS**

### **SECTION 9.1 LIMITATION ON ACTIVITIES**

Notwithstanding any other provisions of these Bylaws, the Corporation shall not carry on any activities prohibited by a Corporation exempt from federal income tax under Section 501(c)(6) of the Code.

### **SECTION 9.2 PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Members, members of the Board of Directors or trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.

### **SECTION 9.3 DISTRIBUTION OF ASSETS**

In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary, or by operation of law), the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of the Corporation to one or more Qualified Organizations, as defined below, as the Board of Directors shall determine. For purposes of this Section 9.3 "**Qualified Organization**" shall mean a corporation or other organization organized and operated exclusively for religious, charitable, educational or other purposes meeting the requirements for exemption provided by the laws of the State of California, as shall at the time qualify either (i) as exempt from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(6) of the Code, or (ii) as a Corporation or other organization contributions to which are deductible under Section 170(c)(1) of the Code.

No part of the net earnings of this Corporation shall inure to the benefit of, or be distributable to, its Members, members of the Board of Directors, officers, or other private

persons, except that this Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Bylaws.

## **ARTICLE 10: AMENDMENT OF BYLAWS**

Except as otherwise set forth in Sections 3.1 above or required by law including Section 7151(e) of the California Corporations Code, these Bylaws, or any of them, may be altered, amended, or repealed and new Bylaws adopted by a vote of an Absolute Super Majority of the Board of Directors. The additional approval of the Governing Members of the Corporation shall be necessary for amendment of these Bylaws in cases in which such approval is required by law.

## **ARTICLE 11: CONSTRUCTION AND TERMS**

If there is any conflict between the provisions of these Bylaws and the Articles of Incorporation of the Corporation, the provisions of the Articles of Incorporation shall govern.

Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holdings.

All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation, Articles of Organization, Certificate of Incorporation, Organizational Charter, Corporate Charter, or other founding document of the Corporation filed with an office of this state and used to establish the legal existence of the Corporation.

All references in these Bylaws to a section or sections of the Internal Revenue Code or the Code shall be to such sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of any future federal tax code.

## **ARTICLE 12: MEMBERSHIP PROVISIONS**

### **SECTION 12.1 DETERMINATION AND RIGHTS OF MEMBERS**

The Corporation shall have Members and classes of Membership (“**Member Classifications**”) as defined by the Board of Directors. The Board of Directors shall be empowered to create both voting and nonvoting classes of Members. No Member shall hold more than one membership in the Corporation. Where it appears that an organization is, via related, partially owned, or subsidiary entities, seeking membership in the Corporation for such entities, the Board of Directors shall determine the suitability of such membership by considering written guidelines and the best interests of the Corporation, including the allowance of nonvoting Member Classifications for such entities. Except as expressly provided in or authorized by the applicable Membership Agreements, the Articles of Incorporation, the Bylaws of this Corporation, or provisions of law, all Members shall have the rights, privileges, restrictions and conditions established by resolution of the Board of Directors.

### **SECTION 12.2 QUALIFICATIONS FOR MEMBERSHIP**

The qualifications for membership in this Corporation are as follows:

Subject to the provisions of Section 12.1, any for profit or nonprofit entity, individual or enterprise who is supportive of the purposes and goals of this Corporation, and who is not either (i) an Affiliate of a Member organization, or (ii) employed by a Member organization or an Affiliate of a Member organization is qualified to become a Member of the Corporation. Notwithstanding the foregoing, an Affiliate of a Member, including a division of a Member, or an employee of a Member may be admitted as a nonstatutory member participant by qualifying in accordance with the applicable provisions of Section 14.4. While a Member in good standing of the Corporation, all Members agree that subject to the Member's logo and/or trademark usage guidelines, if any, the Corporation may reproduce their designated corporate logo and business name on the Corporation's website and on collateral marketing materials for purposes of acknowledging their Membership in the Corporation. A Member's name shall be promptly removed from the Corporation's public lists of Members and press releases and shall be removed from any other marketing material as soon as commercially practicable following the time the Member is terminated or is otherwise no longer a Member of the Corporation.

### **SECTION 12.3 ADMISSION TO MEMBERSHIP**

Applicants shall be admitted as Members upon affirmation of the Articles of Incorporation and these Bylaws; the execution of a Membership Agreement; and payment of the applicable annual dues fee as specified on the Membership Agreement.

[All Members shall be bound by the Corporation's Antitrust Guidelines, as they may be amended from time to time, and the Corporation's Intellectual Property Rights Policy, as it may be amended from time to time. Nothing in this paragraph is intended to give any Member any broader rights than as specifically provided elsewhere in these Bylaws or as specifically authorized by action of the Board of Directors.](#)

### **SECTION 12.4 FEES AND DUES**

The annual dues payable to the Corporation by each class of Members shall be established and may be changed from time to time by resolution of the Board of Directors. Initial dues shall be due and payable within thirty (30) days of written commitment to join the Corporation. Thereafter, dues shall be due and payable on the anniversary of the Member's joining the Corporation. If any Member is delinquent in the payment of dues, such Member's rights shall be deemed suspended upon written notice from the Corporation until all delinquent dues are paid. During any suspension for nonpayment of dues, the rights of the member of the Board of Directors representing such Member organization shall also be suspended pursuant to the provisions of Section 4.14.

### **SECTION 12.5 NUMBER OF MEMBERS**

Unless otherwise provided in these bylaws, there is no limit on the number of Members the Corporation may admit.

### **SECTION 12.6 MEMBERSHIP BOOK**

The Corporation shall keep a membership book containing the name and address, including electronic mail address, of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member organization who shall serve as a primary contact for the Corporation, receive all correspondence and information, distribute this information within his or her organization, and vote on all issues submitted to a vote of the Members. Termination of the membership of any Member shall be recorded in the book, together with the date of termination of such membership. Such book shall be kept at the Corporation's principal office. Membership in the Corporation is a matter of public record; however, membership lists will not be sold or otherwise used for commercial purposes.

#### **SECTION 12.7 NONLIABILITY OF MEMBERS**

No Member of this Corporation shall be, by virtue of its membership in the Corporation, individually liable for the debts, liabilities, or obligations of the Corporation or any other Member.

#### **SECTION 12.8 MEMBERS NOT AGENTS OF ONE ANOTHER OR CORPORATION**

Except as may be agreed to via a separate signed agreement, no Member shall act or represent or hold itself out as having authority to act as an agent or partner of any other Member, or in any way bind or commit any other Member to any obligations. Additionally, unless duly authorized in writing by the Corporation, pursuant to these Bylaws, the Articles of Incorporation or under the law, no Member shall act or represent or hold itself out as having authority to act as an agent or partner of the Corporation or in any way bind or commit the Corporation to any obligations.

#### **SECTION 12.9 NONTRANSFERABILITY OF RIGHT TO PARTICIPATE**

All rights of Membership cease upon the Member's dissolution. No right to participate or Membership Agreement may be assigned without the prior written consent of the Corporation, and any purported assignment without such written approval shall be null and void.

#### **SECTION 12.10 TERMINATION OF MEMBERSHIP**

The membership of a Member shall terminate upon the occurrence of any of the following events:

A. Upon a failure to initiate or renew a Membership Agreement by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Member by the Executive Director or Chairman of the Corporation and the provisions set forth in California Corporations Code Section 7341 are followed. A Member may avoid such termination by paying the amount of delinquent dues while such termination is pending.

B. Upon a continued lack of participation in fifty percent (50%) of duly noticed and held meetings or votes as required by the Board of Director representative of such Member over a twelve (12) month period and a decision by action of the Disinterested Directors to pursue termination if a written notification of possible termination and vote of an Absolute Super

Majority of Governing Members due to lack of participation is given personally or mailed to such Member by the Secretary of the Corporation and the provisions set forth in California Corporations Code Section 7341 are followed.

C. Upon unanimous vote of all Disinterested members of the Board of Directors as defined in Section 4.6, above, when such members determine that the Member has violated the policies, procedures, or duties of membership herein or the implementation of the provisions set forth in California Corporations Code Section 7341.

E. Upon written notice from a Member to the Board of Directors indicating the Member's desire to terminate its membership in the Corporation; provided, however, that all obligations of the Member to the Corporation incurred prior to the date of termination shall survive such termination.

F. In the case of a Participant, upon the breach or default of the Participant of any of the Member Agreement.

F. Upon a Member's dissolution.

All rights of a Member in the Corporation shall cease on termination of the Membership Agreement as herein provided. All Member rights to display the Corporation's Trademarks (as defined in Section 16.3, below) granted in any agreements entered into between Member and the Corporation shall also terminate. A Member terminated from the Corporation, voluntarily or otherwise, shall not receive any refund of dues already paid for the current dues period. On termination of a Membership Agreement, and for a period of three (3) years thereafter, the provisions of Article 15 shall remain intact and survive such termination.

## **ARTICLE 13: MEETINGS OF GOVERNING MEMBERS**

### **SECTION 13.1 PLACE OF MEETINGS**

Meetings of Governing Members shall be designated from time to time by resolution of the Board of Directors, which resolution shall specify the meeting place and time. At the discretion of the Board of Directors, meetings may be held in person or by any combination of audio, document, or videoconferencing techniques.

### **SECTION 13.2 REGULAR MEETINGS**

The Annual Meeting of Governing Members shall be held for the purpose of transacting business as may come before the meeting. The Annual Meeting of Governing Members shall be deemed a regular meeting.

Other regular meetings of the Governing Members shall be held on dates and at times to be determined by the Board of Directors.

### **SECTION 13.3 SPECIAL MEETINGS OF GOVERNING MEMBERS**

Special meetings of the Governing Members for any purpose shall be called by the Board of Directors, or by written request of three-quarters (3/4) of the Governing Members.

### **SECTION 13.4 NOTICE OF MEETINGS**

Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, notice stating the place, day and hour of the meeting of the Annual Meeting or any Special Meeting shall be provided not less than thirty (30) days and not more than ninety (90) days in advance thereof.

The primary means for the provision of notice shall be via electronic mail and first class mail simultaneously to each Governing Member at the address for each Governing Member on the records of the Corporation. As notification is provided by first class mail, such notice shall be deemed to be delivered when deposited in the mail addressed to the Governing Member at the Governing Member's address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by telephone, facsimile, or other electronic means; provided, however, in the case of facsimile notification, the Governing Member to be contacted shall acknowledge personal receipt of the facsimile notice by a return facsimile or electronic message or telephone call within three (3) working days of the first notification.

Whenever any notice of a meeting is required to be given to any Governing Member of this Corporation under provisions of the Articles of Incorporation, these Bylaws, or the law of the State of California, a waiver of notice in writing signed by the Governing Member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

### **SECTION 13.5 QUORUM FOR MEETINGS**

A majority of the Governing Members shall constitute a quorum.

### **SECTION 13.6 GOVERNING MEMBER ACTION**

All acts performed or decisions made by a majority (excluding abstentions) of Governing Members present at a duly held meeting at which a quorum is required shall constitute the action of the Governing Members.

### **SECTION 13.7 GOVERNING MEMBER VOTING RIGHTS**

Each Governing Member shall have one (1) vote on each matter submitted to a vote by the Governing Members. Voting at meetings shall be by a show of hands if held in person or by voice ballot if held by audio, videoconferencing or teleconferencing, unless otherwise required. Proxy voting by any Governing Member on behalf of another shall be prohibited. Results of all ballots shall be duly distributed to all Governing Members within thirty (30) days of each vote. Written confirmation of any and all ballots shall be maintained with the Corporation's minutes. With the exception of Governing Member voting agreements regarding confidentiality, or as

otherwise permitted by resolution of the Board of Directors, all Governing Member votes shall be advisory in nature and nonbinding upon the Board of Directors or the Corporation.

### **SECTION 13.8 ACTION BY WRITTEN BALLOT**

Except as otherwise provided under the Articles of Incorporation, these Bylaws, or provisions of law, any action which may be taken at any regular or special meeting of Governing Members may be taken without a meeting if the Corporation distributes a written ballot to each Member entitled to a vote.

The ballot shall:

- A. Set forth the proposed action;
- B. Provide an opportunity to specify approval or disapproval of each proposal; and
- C. Specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford Members a reasonable time within which to return the ballots to the Corporation.

Ballots shall be mailed or delivered in accordance with the notice provisions of Section 13.4, above.

Approval of action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum, if required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

### **SECTION 13.9 CONDUCT OF MEETINGS**

Meetings of Governing Members shall be presided over by the Chairman of the Corporation or, in his or her absence, by a chairperson of a Committee designated by the Board of Directors. The Secretary of the Corporation shall act as Secretary of all meetings of Governing Members, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

Meetings shall be governed by such procedures as may be approved from time to time by the Board of Directors, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with provisions of law.

## **ARTICLE 14: STATUTORY MEMBER AND PARTICIPANT CLASSIFICATIONS**

### **SECTION 14.1 STATUTORY MEMBERS**

The Corporation shall have members who shall be “members” as that term is defined in Section 5056 of the California Corporations Code or any successor statute and shall constitute the statutory membership of the Corporation, within the meaning of the California Corporations

Code and these bylaws. Governing Members shall be the only statutory members of the Corporation. The Governing Members shall have all of the rights of members of a California Mutual Benefit Corporation which are provided in the California Corporations Code and these bylaws. The Board of Directors may, from time to time, designate additional membership classifications.

## **SECTION 14.2 NON STATUTORY MEMBER PARTICIPANTS**

In addition to Governing Members, the Corporation shall have categories of non statutory member participants, who shall be referred to as “Participating Members,” “General Members,” “Corresponding Members,” “Supporting Members,” “Liaison Members,” and “Advisory Council Members” respectively. Despite this terminology, none of the Participating Members, General Members, Corresponding Members, Supporting Members, Liaison Members, or Advisory Council Members shall be “members” of the Corporation as defined in Section 5056 of the California Corporations Code or any successor statute, nor shall they have any of the rights of members provided by the California Corporations Code. Participating Members, General Members, Corresponding Members, Supporting Members, Liaison Members, and Advisory Council Members shall have only those rights expressly set forth in these bylaws or expressly granted by resolution of the Board of the Corporation. Rights of Participating Members, General Members, Corresponding Members, Supporting Members, Liaison Members, and Advisory Council Members, whether set forth in these bylaws or in a resolution of the Board, are subject to change or elimination by the Board at any time on a going forward basis, provided that that dues, fees and assessments shall be equal for all members of each class. The qualifications, rights and duties of Participating Members, General Members, Corresponding Members, Supporting Members, Liaison Members, and Advisory Council Members are set forth below.

## **SECTION 14.3 GOVERNING MEMBERS**

The Corporation shall have Governing Members who are a person or entity who or that supports the purpose of the Corporation; applies for Governing Member status in the Corporation; executes and delivers a Membership Agreement agreeing to comply with all terms of membership in the Corporation; timely pays all dues and assessments; and is approved for admission by an Absolute Super Majority vote of the Board of Directors. Governing Member Membership shall be limited to the first fifteen (15) Members who comply with these requirements. A Governing Member who or that ceases to satisfy the qualifications for Membership shall be terminated as a Member as set forth in Section 12.10 hereof. In addition to the rights generally afforded to all Members, Governing Members shall be granted the specific additional rights stated in this Section 14.2 and shall be subject to the obligations stated in Articles 15 and 16, below. If, on dissolution, the Corporation’s liabilities exceed its assets, then each Governing Member shall be proportionately responsible to contribute such funds as are necessary to satisfy such liabilities, provided that such contributions need not exceed the yearly Governing Member dues that would have been due on continuation.

Among other benefits specifically afforded to Governing Members who remain in good standing are:

- A. The permanent right to appoint a representative to a seat on the Board of Directors of the Corporation;

- B. The right to be listed (with a hyperlink to the Member's website) as a Governing Member on the Corporation's website;
- C. The right to access any and all portions of the Corporation's website and any electronic transmissions therefrom via reflector, including the right to access the Member-only discussion groups;
- D. The right to have a representative appointed by the Board of Directors act as the chairperson of a Committee or a Work Group.
- E. The right to review any and all specifications, including drafts thereof.
- F. The right to access Governing Member-only confidential information, including but not limited to the internal working documents of the Corporation;
- G. The right to serve on and chair Committees and Work Groups thereunder.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Governing Members may be entitled.

#### **SECTION 14.4 NON-STATUTORY MEMBERSHIP CLASSES**

The Corporation shall have six classes of non-statutory members: (1) Participating Members; (2) General Members; (3) Corresponding Members, (4) Supporting Members; (5) Liaison Members; and (6) Advisory Council Members. The Board of Directors may call general meetings of the Corporation which shall include one or more of the classes of non-statutory members. Any vote taken at such meetings shall be for informational purposes only.

(a) Participating Members. Participating Membership shall be open to all individuals or entities that are supportive of the purposes and goals of this Corporation and is intended primarily for key suppliers of equipment and technology to specifications. Participating Members must each execute and deliver a Membership Agreement and thereafter maintain their Participating Membership in good standing.

Among other benefits specifically afforded to Participating Members who remain in good standing are:

- A. The right to be listed (with a hyperlink to the Member's website) on the Corporation's website;
- B. The right to access select portions of the Corporation's website and any electronic transmissions therefrom via reflector, including the right to access select Member-only discussion groups;
- C. Upon invitation by the members of a Committee, the right to join and participate in the activities of the Work Groups of such Committee with such limited voting rights granted by the Board of Directors in Committee and Working Group proceedings in order to give them a voice in the development of specifications;

- D. Complete access to all specifications, including drafts thereof; and
- E. The right to attend any general meetings of the Corporation.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Participating Members may be entitled.

(b) General Members. General Membership shall be open to all individuals or entities that are supportive of the purposes and goals of this Corporation and is intended primarily for those interested in following more closely the work of the Corporation and its specifications. General Members must each execute and deliver a Membership Agreement and thereafter maintain their General Membership in good standing.

Among other benefits specifically afforded to General Members who remain in good standing are:

- A. The right to be listed (with a hyperlink to the Member's website) on the Corporation's website;
- B. As permitted by the Board of Directors, the right to access select portions of the Corporation's website and any electronic transmissions therefrom via reflector, including to the extent permitted, including the right to access select Member-only discussion groups;
- C. Upon invitation by the members of a Committee, the right to join and participate in the activities of the Work Groups of such Committee with such participation rights granted by the Board of Directors in Committee and Working Group proceedings in order to give them a voice in the development of specifications;
- D. Access to completed specifications; and
- E. The right to attend designated meetings of the Corporation.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all General Members may be entitled.

(c) Corresponding Members. Corresponding Membership shall be open to entities that are both supportive of the purposes and goals of this Corporation and either a governmental entity, academic institution, or other entity with no direct economic stake in Corporation activities. Corresponding Membership shall also be open to individuals who work for any such entity if the entity is not a Member. Corresponding Membership is not open to equipment manufacturers, designers, integrators and consultants. Corresponding Members must each execute and deliver a Membership Agreement and thereafter maintain their Corresponding Membership in good standing.

Among other benefits specifically afforded to Corresponding Members who remain in good standing are:

- A. For Corresponding Members that are entities, the right to be listed (with a hyperlink to the Member's website) on the Corporation's website;
- B. As permitted by the Board of Directors, the right to access select portions of the Corporation's website and any electronic transmissions therefrom via reflector, including to the extent permitted, including the right to access select Member-only discussion groups;
- C. Upon invitation by the members of a Committee, the right to join and participate in the activities of the Work Groups of such Committee with such participation rights granted by the Board of Directors in Committee and Working Group proceedings in order to give them a voice in the development of specifications;
- D. Access to completed specifications;
- E. For Corresponding Members that are entities, use of designated Corporation logo at times that the Corporation has rights to use the Corresponding Member's logo; and
- F. The right to attend designated meetings of the Corporation.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Corresponding Members may be entitled.

(d) Supporting Members. Supporting Membership shall be open to all individuals or entities that are supportive of the purposes and goals of this Corporation and is intended primarily for architects, designers, building owners and other relevant companies, organizations and individuals which allow for mutual logo usage. Supporting Members must each execute and deliver any required Membership Agreement.

Among other benefits specifically afforded to Supporting Members who remain in good standing are:

- A. The right to be listed on the Corporation's website;
- B. Use of designated Corporation logo at times that the Corporation has rights to use the Supporter's logo; and
- C. If allowed by the Board, the right to attend designated meetings of the Corporation.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which Supporting Members may be entitled.

(d) Liaison Members. Liaison Membership is a special nonstatutory membership class that is subject to invitation of the Board of Directors for individuals and entities that are supportive of the purposes and goals of this Corporation but that cannot technically join the Corporation. Liaison Members must each execute and deliver any required Liaison Membership Agreement or equivalent documents.

Among other benefits specifically afforded to Liaison Members are:

- A. The right to be listed on the Corporation's website; and
- B. The right to attend designated meetings at the invitation of the Board of Directors.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which Liaison Members may be entitled.

(f) Advisory Council Members. Advisor Council Membership is a special nonstatutory membership class that is subject to invitation by the Board of Directors for other individuals or entities that are supportive of the purposes and goals of this Corporation. Advisory Council Members must each execute and deliver any required Membership Agreement.

The benefits and rights of Advisory Council Members shall be determined by the Board of Directors but shall not include the right to vote, hold office in the Corporation or use the Corporation's intellectual property rights.

## **ARTICLE 15: DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**

### **SECTION 15.1 LIMITATION ON THE SCOPE OF DISCLOSED INFORMATION**

The Members acknowledge that they will not disclose or exchange information as part of the Corporation's activities among themselves unless such disclosure is necessary in order to achieve the lawful purposes of the Corporation. All information disclosed as a part of the Corporation's activities shall be deemed nonconfidential except as may be provided below or as otherwise agreed to in a written agreement between the affected parties.

### **SECTION 15.2 CONFIDENTIAL INFORMATION**

From time to time a Member may deem it necessary to disclose information to the other Members which such Member considers confidential or proprietary ("**Confidential Information**"). In such instances the relevant information may be disclosed as the Confidential Information of the disclosing party if the information is specifically designated as such at the time of disclosure; provided, however, that inadvertent disclosures of Confidential Information not otherwise designated as such may be remedied by notification to all Members to whom such Confidential Information has been disclosed (in accordance with the notification process in this Article 15) of the disclosing Member's intention to maintain the confidentiality of the same to the extent that the receiving Members have not yet disseminated the subject information outside of their organization. Any such designation shall be effected by (1) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (2) by orally indicating that any information disclosed orally is the Confidential Information of the disclosing party and then within ten (10) days providing all other Members with a written summary of the orally disclosed Confidential Information so that such Confidential Information is more easily identified. All information disclosed by Members prior to the date of this Agreement directly for the purposes of the Corporation shall be governed by the provisions of this Section 15.2. Members should at all times refrain from disclosing any Confidential Information to any other Member that is not reasonably related to the legitimate

purpose or activities of the Corporation. All information developed by the Corporation shall be deemed the Confidential Information of the Corporation and subject to the terms hereof until made publicly available. All works in progress, including Member submissions, Corporate personnel matters, minutes of Board of Directors' meetings, minutes of Committees and Work Groups and attorney work product of the Corporation's attorney shall in all cases be deemed Confidential Information of the Corporation and subject to the terms hereof.

### **SECTION 15.3 NONDISCLOSURE**

With respect to Confidential Information of a Member and/or of the Corporation, the receiving party agrees, for a period of three (3) years from the initial date of disclosure, to use the same care and discretion to avoid disclosure, publication, and dissemination outside the receiving party and its subsidiaries, contractors and consultants as the receiving party employs with its own Confidential Information, but no less than reasonable care. Any disclosure by a receiving party to its subsidiaries, contractors and consultants should be subject to an obligation of confidentiality at least as restrictive as those contained in this Article 15. The foregoing obligation shall not apply to any information which is: (1) rightfully known by the receiving party without any limitation on use or disclosure prior to disclosure, as evidenced by the receiving party's contemporaneous written records; (2) publicly available through no fault of the receiving party; (3) rightfully received without a duty of confidentiality; (4) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (5) independently developed by the receiving party, as evidenced by the receiving party's contemporaneous written records; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order; or (7) disclosed by the receiving party with the disclosing party's prior written approval. It is understood that receipt of Confidential Information under these Bylaws shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Member within Member's organization. However, this Section 15.3 shall not be deemed to grant to any party a license under the other party's copyrights or patents.

Nothing contained herein shall preclude the Corporation from entering into Nondisclosure Agreements with third-party non-Members.

### **SECTION 15.4 CORPORATION INFORMATION**

All public disclosures regarding the existence, membership and activities of the Corporation must be approved by the Board of Directors. However, the Corporation's general policy shall be to disclose fully, at the agreed-upon time, all information relating to the Corporation and its activities. If a Member shall be required to disclose any Confidential Information relating to the Corporation pursuant to a valid order of a court or other government body or any political subdivision thereof, the Member shall first give notice to the Board of Directors and make a reasonable effort to obtain a protective order requiring that any such Confidential Information so disclosed be used only for the purposes for which the order was issued.

## **SECTION 15.5 SURVIVAL**

After withdrawal, termination or nonrenewal as a Member, for any reason, a former Member has a continuing duty under this Article 15.