

BY-LAWS
OF
OPEN FAST PATH FOUNDATION

ARTICLE I

NAME, PURPOSE AND OFFICES

Section 1.1 Name. The name of the corporation is “Open Fast Path Foundation” and the corporation is referred to in these By-laws as the “*Foundation*”.

Section 1.2 Principal Office. The principal office of the Foundation shall be located in the state selected by the Board of the Foundation (the “*Board*”). The Board is hereby granted full power and authority to change its principal office from one location to another both within and without said state.

Section 1.3 Other Offices. Branch or subordinate offices may at any time be established by the Board at any place or places.

Section 1.4 Purpose. The nature of the business or purposes to be conducted or promoted by the Foundation is to engage in any lawful act or activity for which corporations that are organized not for profit may be organized under the General Corporation Law of the State of Delaware, as may be amended from time to time, and any successor statute (the “*Act*”) The primary purpose of the Foundation (the “*Purpose*”) is to is to create and develop an open source licensed fast path Transmission Control Protocol / Internet Protocol (TCP/IP) stack that is designed to run on Linux userspace (“*OFP*”) by (a) creating a TCP/IP stack that conforms to Internet Engineering Task Force’s (IETF) standards, (b) by extending the stack to include other protocols and functionality where needed, (c) supporting the Linux user space run to completion process model in processor independent platforms, (d) leveraging open implementations for OFP features and functionality, (e) supporting and maintaining the framework through the technologies made available by the project to make OFP functioning, (f) supporting and maintaining policies set by the Board and (g) undertaking such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. Subject to Sections 2.3(a) and (b) and 13.3, Members are expected to support the design, development, or application of software (including interfaces to hardware) that will implement OFP. In furtherance of these efforts, the Foundation shall seek to solicit the participation of all interested parties on a fair, equitable and open basis.

In support of the Purpose, the Foundation may engage in some or all of the following activities: (a) drive the development of, disseminate, support and maintain the OFP, (b) create and own distinctive trademark, service marks and/or certification marks, (c) administer or subcontract a branding program, (d) create various printed and/or electronic materials for distribution to members and non-members, (e) maintain its own website and source control system, (f) coordinate the promotion of OFP among members and non-members, as well as create events and basic marketing promotional collateral (e.g., both web pages as well as tangible materials), and

(g) undertake those other activities as are consistent with and in furtherance of the Purpose and in accordance with the Act.

Section 1.5 Nonprofit Status.

(a) The Foundation is organized and shall be operated as a non-stock, not for profit membership corporation organized under the General Corporation Law of the State of Delaware.

(b) The Board may, in its sole discretion, elect to seek exemption from Federal taxation for the Foundation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the "**Code**"). In the event that such exemption is sought and until such time, if ever, as such exemption is denied or lost, the Foundation shall not knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

ARTICLE II

MEMBERS

Section 2.1 Membership Expectations and Qualifications. The Foundation's membership structure is designed to ensure that the Foundation is able to pursue its Purpose pragmatically while also creating an opportunity for participation by industry and community members alike. Any for-profit corporation, non-profit corporation, government organization, educational institution, or other entity or individual supportive of the Foundation's purposes and not otherwise prohibited by treaty, law or regulation from abiding by the terms of these By-laws is qualified to become a Member.

Section 2.2 Classes of Membership. The Foundation shall have three classes of membership: Founding Core Members, General Core Members and Community Members. Founding Core Members and General Core Members shall be collectively referred to herein as "**Core Members**" and shall have similar rights and obligations, except as otherwise stated herein, in the Certificate of Incorporation or in the Membership Agreement. Additional classes of voting and non-voting members may be created in the future, and the rights of existing classes of members may be amended, in each case pursuant to Section 2.10 of these By-laws. Core Members and any future classes of members that are entitled to voting rights shall be collectively referred to as "**Voting Members**." All Voting and non-voting memberships in the Foundation are collectively referred to in these By-laws as "**Memberships**", and a person or entity holding Membership is referred to in these By-laws as a "**Member**".

Section 2.3 Membership Qualifications. Subject to Section 2.5, the following shall be the requirements for Membership in each Membership class.

(a) Founding Core Members. "**Founding Core Members**" are Members who hold a Membership in the Foundation as of December 1, 2015. Each of the Founding Core Members will be prominent CPU and networking SoC companies, major OEM's, software companies and individuals, who will make a substantial financial commitment in the form of annual membership

fees, the amount of which may be established from time to time by the Board as set forth in Section 2.6. Founding Core Members may, but shall not be required to, contribute source code and/or related documentation under the Contribution Agreement to the Foundation. In the event the Founding Core Member elects to contribute source code and/or related material, it shall be required to execute and deliver to the Foundation a Open Fast Path Foundation Corporate Contribution License Agreement (a "*Contribution Agreement*").

(b) General Core Members. "*General Core Members*" shall be entities which otherwise meet the requirements of Founding Core Members but who become Members of the Foundation after December 1, 2015. General Core Members may, but shall not be required to, contribute source code and/or related documentation under the Contribution Agreement to the Foundation. In the event the Founding Core Member elects to contribute source code and/or related documentation it shall be required to execute and deliver to the Foundation a Contribution Agreement.

(c) Community Members. "*Community Members*" are any entity or individual who executes and delivers to the Foundation a Contribution Agreement and contributes source code and/or related documentation to the Foundation. A Community Member is not required to commit any resources or pay any annual membership fees to the Foundation.

Section 2.4 Rights and Privileges of Members.

(a) Privileges of Core Members. Each Founding Core Member and General Core Member, while in good standing as a Founding Core Member or General Core Member, respectively, shall be entitled to:

(i) subject to Section 4.3, including with respect to the appointment of Founding Directors by Founding Core Members as set forth in Section 4.3(a), nominate one representative who, if elected, has the right to appoint a member of the Board (a "*Director*"), in accordance with such section;

(ii) appoint one representative to the Technical Steering Committee;

(iii) appoint one voting representative, on a one vote per Member basis, to each Member Committee thereof that the Board may establish;

(iv) nominate a Director to run for election as Chairman of the Board;

(v) nominate a representative to be appointed by the Board to be Executive Director, if any;

(vi) highest priority access to any technical assistance and/or certification services that may from time to time be offered by the Foundation;

(vii) most prominent list in all appropriate Foundation marketing matters;

(viii) such other rights as may be amended or created by the Board pursuant to its authority under Section 2.10 and Article XIV or under the Act; and

(ix) Such other benefits, rights and privileges available to Community Members.

(c) Privileges of Community Membership. Each Community Member, while in good standing, shall be entitled to:

(i) participate in membership activities and events organized by the Foundation and which are made available to all Members;

(ii) participate in development activities of the Foundation as determined by the Technical Steering Committee;

(iii) participate in development projects undertaken by a Working Group (defined in Section 5.2(b) below) (such projects, "**Working Group Projects**"), subject to the relevant IP licensing terms adopted by the relevant Working Group for that particular Working Group Project in accordance with the provisions of the IP Policy; and

(iv) such other benefits, rights, and privileges as the Board may designate by vote pursuant to Section 2.10 and Article XIV below or under the Act.

Section 2.5 Admission of Members.

(a) Admission of Core Members. A Core Member shall be admitted to Membership upon:

(i) acceptance by the Foundation of its written membership application in such form as may be determined by the Foundation from time to time (the "**Core Membership Agreement**");

(ii) receipt by the Foundation of such Core Member's written acceptance of these By-laws and the IP Policy (as defined in Section 2.14);

(iii) acceptance by the Foundation of such Core Member's Membership Fees (as defined in Section 2.6) for its first year of Membership paid in advance; and

(iv) satisfaction within such time period as may be provided of such other conditions, including, without limitation, requirements for in-kind contributions as may from time to time be established by the Board for Core Members.

(b) Admission of Community Members. A Community Member shall be admitted to Membership upon:

(i) acceptance and approval by the Foundation of its written membership application in such form as may be determined by the Foundation from time to time (the "**Community Membership Agreement**", and each of the Core Membership Agreement and the Community Membership Agreement, a "**Membership Agreement**");

(ii) receipt by the Foundation of such Community Member's written acceptance of these Bylaws and the IP Policy;

(iii) receipt by the Foundation of a Contribution Agreement duly executed by such Community Member; and

(iv) satisfaction within such time period as may be provided of such other conditions.

Section 2.6 Membership Fees, Dues and Assessments.

(a) Generally. All Members, other than Community Members, may be subject to pay a membership fee that is set annually by the Board (the "**Membership Fees**"). Core Members will initially pay a Membership Fee of \$5,000 annually. There is no Membership Fee for Community Members. Membership Fees, if applicable, are to be set forth in each Member's Membership Agreement, and may be modified by the Board in a reasonable and non-discriminatory manner at any time.

(b) Payment. Except for the initial Membership Fees, which shall be due upon admission to Membership, Membership Fees will be due in advance on the anniversary of the Member's initial acceptance into the Foundation pursuant to Section 2.5. The Secretary of the Foundation will send out invoices in compliance with reasonable invoicing requirements (e.g. receipt of invoices at least thirty (30) days prior to the due date). The Secretary will promptly send out a written notice ("**Fee Notice**") to any Member that has not paid its dues, as applicable, within ten (10) days after the date upon which such dues are required to be paid. Members may be removed for non-payment as set forth in Section 2.12(a)(ii).

(c) Assessments. The Board by unanimous approval may levy assessments upon the Core Members, provided that such assessments are levied upon each Core Member equally, and provided further that written notice specifying the amount of the assessment, and the manner and period in which such assessment is to be paid, is delivered sixty (60) days in advance of any assessment to any Core Member that will be assessed. A Core Member may withdraw from the Foundation in advance of the assessment date and not be obliged to pay the assessed amount to the Foundation. Any assessments will be in addition to any Membership Fees, unless the Board provides otherwise. The Board may terminate the membership of any Core Member not remitting the assessment amount within the period specified in the written assessment notice sent to the Core Members being assessed.

Section 2.7 Good Standing. A Member shall remain in good standing as a Member provided such Member is in compliance with the terms and conditions of the Foundation's Certificate of Incorporation, By-Laws, Membership Agreement and such rules and policies (and such terms of any agreement required thereby), including without limitation the IP Policy, as the Board and/or any committees thereof (each a "**Board Committee**") may from time to time adopt, and, if applicable, is current in its fulfillment of all in-kind commitments and payment of all Membership Fees and penalties for late payment as may be required or determined by the Board (such Membership Fees and penalties are collectively referred to herein as "**Financial Obligations**" and

all of the foregoing good standing requirements are collectively referred to in these By-laws as "*Membership Obligations*").

Section 2.8 Related Companies; Subsidiaries, Etc.

(a) Board Representation of Related Companies. Only one Core Member that is part of a group of Related Companies shall be entitled to nominate or appoint, as appropriate, a Core Representative or a representative to the Technical Steering Committee. For purposes of these By-laws, the term "*Related Company*" shall mean any entity which controls or is controlled by a Member or which, together with a Member, is under the common control of a third party, in each case where such control results from ownership, either directly or indirectly, of more than fifty percent of the voting securities or membership interests of the entity in question; and "*Related Companies*" are entities that are each a Related Company of a Member. For purposes of this Section 2.8(a), Community Members who are individuals, regardless of their employer, are not considered part of a Related Company of any other Member.

(b) Membership Rights of Subsidiaries. With respect to Members which are entities, only the legal entity which has been accepted as a Member of the Foundation and its Subsidiaries shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member and its Subsidiaries shall be treated together as a single Member. For purposes of this Section, the term "*Subsidiaries*" shall mean all Related Companies that a Member controls.

(c) No Multiple Memberships for Related Companies. No Related Company of a Member may apply for Membership as a Member for so long as the existing Member retains its Membership.

(d) Member Foundations. If a Member is itself a foundation, consortium, membership organization, user group or other entity that has members or sponsors, then the rights and privileges granted to such Member shall extend only to the employee-representatives of such Member, and not to its members or sponsors, unless otherwise approved by the Board in a specific case from time to time.

Section 2.9 Non-Transferability of Membership. Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its current Membership benefits and obligations to (a) a Related Company, or (b) a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that in either case the transferee agrees to be bound by these By-laws, the Certificate of Incorporation, the Membership Agreement and such policies and procedures as the Board may from time to time adopt.

Section 2.10 Additional Classes of Members. The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one or more additional classes of Membership may be created, and the conditions, voting rights (if any), powers and privileges of each such class may be prescribed, by amendment to these By-laws in accordance with Article XIV.

Section 2.11 Resignation of Membership

(a) Resignation of Core Membership. A Core Member may withdraw from Membership of the Foundation at any time by giving written notice of resignation to the Secretary of the Foundation. Any Financial Obligations already paid by such resigning Core Member shall not be refundable upon any resignation, and all such Financial Obligations of such Member which may be accrued and unpaid as of such date shall remain due and payable.

(b) Resignation of Community Membership. A Community Member may withdraw from Membership of the Foundation at any time by giving written notice of resignation to the Corporation. Any such resignation shall be effective on the date received.

Section 2.12 Termination or Suspension of Membership.

(a) The Membership of any Member may be terminated or suspended "For Cause" upon a Disinterested Super Majority Vote of the Board after a hearing duly held in accordance with Section 2.12(b). For purposes of this Section 2.12, a "***Disinterested Super Majority Vote***" is a Super Majority Vote (as defined in Section 4.11(b)) exclusive of any Director that is also a representative of the Member facing termination or suspension. For purposes of this Section 2.12(a), "***For Cause***" shall mean:

(i) except as otherwise set forth in Section 2.12(a)(ii), material or persistent failure to satisfy its Membership Obligations, including the failure to pay any applicable Membership Fees or penalties; provided that if any such breach is capable of remedy the Board may not suspend or terminate such Member's Membership unless the Member has failed to remedy the breach to the Board's satisfaction within thirty (30) business days of written notice from the Board requiring it to do so;

(ii) the failure to pay its Financial Obligations (including all compounded late fees) within ninety (90) days of the Fee Notice;

(iii) the Board believes in good faith that a Member is engaging in willful misconduct or otherwise acting to the material detriment of the best interests of the Foundation and its Members; or

(iv) in the reasonable opinion of the Board, the continued Membership of that Member is likely to prejudice the deliverability of any particular project which the Board has previously committed the Foundation to delivering.

(b) Requirements for Termination. Except as provided in the last paragraph of this Section 2.10(b), no termination or suspension of Membership shall be effective unless:

(i) The Member is given written notice of the proposed termination or suspension of Membership and of the reasons therefor;

(ii) Such notice is delivered personally or by certified mail, return receipt requested, or by a national or international overnight courier service, sent to the last address of the Member shown on the Foundation's records;

(iii) Such notice is given at least fifteen (15) days prior to the effective date stated in the notice of the proposed termination or suspension of Membership;

(iv) Such notice sets forth a procedure determined by the Board (or other body authorized by the Board) to decide whether or not the proposed termination or suspension shall take place, whereby the Member is given the opportunity to be heard by such body, either orally (and represented by counsel if the Member so desires, at its sole cost and expense) or in writing, not less than five (5) days before the effective date of the proposed termination or suspension; and

(v) Such termination or suspension of Membership is approved by Disinterested Super Majority Vote of the Board.

Notwithstanding the foregoing, in the event that the Member is being terminated subject to Section 2.12(a), the Board, acting by Disinterested Super Majority Vote, may suspend such Member's Membership immediately, provided that such Member is otherwise afforded the protections provided for in subsections (i), (ii) and (iv) of this Section 2.12(b); provided that for purposes of subsection (iv), the opportunity to be heard shall be held following the effective date of suspension.

(c) Termination for Bankruptcy, Death or Dissolution. A Membership of a Member shall be immediately terminated upon the occurrence of:

(i) in the case of an entity, such Member (A) makes an assignment for the benefit of creditors; (B) files a voluntary petition in bankruptcy; (C) is adjudged a bankrupt or insolvent, or has entered against it an order for relief, in any bankruptcy or insolvency proceeding; (D) files a petition or answer seeking for itself any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; or (E) seeks, consents to or acquiesces in the appointment of a trustee, receiver or liquidator of the Member or of all or any substantial part of its properties; or

(ii) the dissolution or death of such Member.

(d) Treatment of Financial Obligations. Financial Obligations, if any, already paid shall not be refundable upon any such termination or suspension under this Section 2.12, and all Financial Obligations of such Member which may be accrued and unpaid as of the date of such termination shall remain due and payable.

(e) Reinstatement. Members terminated pursuant to this Section 2.12 may only be reinstated upon a Disinterested Super Majority Vote of the Board.

Section 2.13 Use of Names.

Each Member agrees and consents, subject to its internal approval process and its standard logo license terms, to the use of its corporate name and corporate logo in membership lists on the Foundation website and membership lists in the Foundation promotional materials, provided that each name listed shall be of equal prominence of all other names listed that are part of the same membership class. Any other public use of the Member's name by the Foundation shall require that Member's prior written consent. The use of the corporate name or the corporate logo of each

Member shall inure solely to the benefit of such Member, and be subject to that Member's usage guidelines, if any, as updated from time to time.

Section 2.14 Rights in Intellectual Property. The Board shall give all Members at least thirty (30) days' written notice prior to the adoption of, or any material change to, any intellectual property rights policy or any other material policy or procedure governing intellectual property (an "**IP Policy**"), such that any Member may resign its Membership prior to the effective date thereof in accordance with Section 2.11 above. For the avoidance of doubt, no such adoption or material change shall be effective until at least thirty (30) days have passed since the provision of written notice. A material change shall be deemed to include, without limitation, the imposition of a patent license obligation on Members, and a change in the license applicable to Members' contributions.

Section 2.15 Non-Liability of Members. No Member of this Foundation, as such, shall be liable, either individually or together with any person, for the debts, liabilities or obligations of the Foundation.

Section 2.16 Dissolution of Assets Upon Distribution. Upon a dissolution of the Foundation, and after all known debts and liabilities of the Foundation have been paid or adequately provided for, any remaining net assets of the Foundation shall be distributed by the Board to one or more organizations selected by the Board which will help to further the Purpose.

ARTICLE III

ACTIONS OF MEMBERS

Section 3.1 Annual Meetings. The annual meeting of the Voting Members shall be held each year, on such date and at such time and place as determined by resolution of the Board (the "**Annual Meetings**"). Other regular meetings of the Voting Members shall be held on dates and at times as may be fixed by a resolution or resolutions adopted by the Board. Community Members are permitted to attend but not vote at Annual Meetings and regular meetings of the Voting Members.

Section 3.2 Special Meetings. Special meetings of the Voting Members shall be held at the call of the Executive Director, if any, by the Secretary or by at least 20% of the Voting Members by written demand signed, dated and delivered to the Secretary of the Foundation. Community Members are permitted to attend but not vote at special meetings of the Voting Members.

Section 3.3 Notice of Meetings. Notice of each Annual Meeting or special meeting of the Voting Members shall be given to each Voting Member at the last address of record at least ten (10) days but not more than sixty (60) days before the meeting. Notice of regular meetings of the Board may be held without notice other than the resolution fixing such regular meeting. The notice for Annual Meetings and special meetings shall include the date, time and place of the meeting or the date on which any ballot enclosed therein shall be required to be returned for inclusion in the Foundation's voting process. Notice of each Annual Meeting and each regular and special meeting shall include a description of any matter or matters to be addressed by the Voting Members pursuant to these By-Laws or applicable law. In the case of special meetings or when required by the Act or these By-laws, the notice shall specify the purpose or purposes for which the meeting

is called. Such notice shall be given in writing to every Voting Member who, on the record date for notice of the meeting, is entitled to vote thereat. Notice of a meeting need not be given to any Voting Member who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Voting Member. The Foundation may, but is not required to, provide notice of any such meeting to all Community Members who are Members as of the record date, at least ten (10) days before the meeting.

Section 3.4 Telephonic Meetings. Unless otherwise restricted by the Certificate of Incorporation or by these By-laws, Voting Members may participate in a meeting of the Voting Members by means of conference telephone, video conference equipment or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 3.5 Quorum. At all meetings of the Voting Members, a majority of Voting Members (in person or by proxy) shall constitute a quorum for the transaction of business.

Section 3.6 Action. Each Voting Member shall have one vote on all matters submitted to a vote of the Members. At any meeting of the Voting Members at which a quorum is present (in person or in proxy), at least a majority of Voting Members present (in person or by proxy) at the time the vote is taken is required to take action on a matter unless a vote of greater proportion is otherwise required by these By-laws, the Certificate of Incorporation or the Act.

Section 3.7 Adjournment. If a quorum shall not be present at any meeting of the Voting Members, a majority of the Voting Members either present in person or in proxy may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each Voting Member who, on the record date for notice of the meeting, is entitled to vote at the meeting. The Foundation may, but is not required to, provide notice of any such meeting to all Community Members who are Members as of the record date, at least ten (10) days before the meeting.

Section 3.8 Action Without a Meeting. Action required or permitted to be taken at a meeting of the Voting Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by a majority of the Voting Members (or such greater number of Voting Members as may be required by law or by the By-laws of this Corporation for the taking of any such action at a meeting) and delivered to the Secretary of the Foundation for filing with the Foundation's records. Electronic communications and electronic solicitation of Voting Members are permitted.

Section 3.9 Conduct of Meetings. Meetings of the Voting Members shall be presided over by the Chairman of the Board, or in the absence of the Chairman of the Board, by the Executive Director of the Foundation or in the absence of an Executive Director, the President of the Foundation. The Secretary shall act as the secretary for all meetings of the Voting Members, provided that, in his or her absences the presiding officer shall appoint another Voting Member to act as Acting Secretary of the meeting.

Section 3.10 Nomination and Election Procedures. Subject to the provisions of Section 4.3, the Board shall establish reasonable nomination and election procedures given the nature, size, and operations of the Foundation, including a reasonable means for Core Members to nominate a person for election as a Chairman of the Board or Executive Director, a reasonable opportunity for a nominee to communicate to the Core Members the nominee's qualifications and the reasons for the nominee's candidacy (if requested by such nominee), a reasonable opportunity for all nominees to solicit votes (if requested by any such nominee), and a reasonable opportunity for all Core Members to choose among the nominees.

ARTICLE IV

DIRECTORS

Section 4.1 Powers; Voting. The business and affairs of the Foundation shall be managed by its Board, which shall be, and shall possess all of the powers of, the "Governing Body" of the Foundation as a not-for-profit membership corporation under the Act. The Board may exercise all powers of the Foundation and do all such lawful acts and things as are not by applicable statute, by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the Members. No Director may act for, or speak on behalf of, the Board or the Foundation except as directed or authorized by the Board.

Section 4.2 Number of Directors; Non-Member Directors.

(a) Number of Directors. The number of Directors constituting the whole Board shall be subject to adjustment from time-to-time by a Super Majority Vote of the Board, but in no event shall be less than one (1) director; provided that, notwithstanding the foregoing, the unanimous consent of the Founding Directors shall be required to adjust the number of Directors during the Initial Term (defined in Section 4.3(a) below). The Board shall initially consist of three (3) Directors, who shall be appointed by the Founding Core Members pursuant to Section 4.3(a) (the "**Initial Board**"). The Board shall comprise the Directors described in Section 4.3 below.

(b) Non-Member Directors. The Board, by unanimous vote, shall have the discretion to designate up to two (2) Director seats to which the Board may appoint an officer or committee chair (e.g. the Executive Director or Technical Steering Committee Chair) (a "**Non-Member Director**"); provided that in no event shall the Board so designate if there are less than three (3) Directors who are appointed by Core Members (whether by the Founding Core Members or Core Representatives, as applicable).

Section 4.3 Appointment and Nomination.

(a) Initial Board. Each Founding Core Member (while remaining in good standing) shall be entitled to individually appoint one Director to the Initial Board (each Director, a "**Founding Director**"), which shall be an employee, officer, director or consultant of the respective appointing Founding Core Member. Unless otherwise removed from office pursuant to these By-laws, Founding Directors shall hold office for a three (3) year term (the "**Initial Term**") and shall be elected to serve until their respective successors are elected and qualified, or as otherwise provided in these Bylaws. If a Founding Core Member ceases to be a Founding Core Member or

is otherwise suspended pursuant to Section 2.12, any Founding Director nominated by such terminating Founding Core Member shall be removed from the Initial Board and the size of the Initial Board shall be decreased accordingly. Each Founding Core Member shall be entitled to remove and replace the individual serving as its Founding Director at any time with or without cause by providing notice to the Foundation, which replacement shall be effective immediately unless otherwise set forth in the notice.

(b) Subsequent Terms of the Board. Following the Initial Term, the Core Members then in good standing, by majority vote of the Core Members, shall be entitled to elect representatives of the Core Members (the “*Core Representatives*”), each of whom shall appoint one (1) representative to the Board (a “*Core Director*”); provided that, each such representative must be an employee, officer, director or consultant of the appointment Core Member. The Core Representatives shall be elected at the Annual Meeting or special meeting called for the purpose of electing Core Representatives. If any meeting is delayed or not held in any year, the Core Directors then in office shall remain in office until the next Annual Meeting or special meeting called for the purpose of electing Core Representatives. The number of Core Representatives to be elected at a meeting shall equal the number of Directors comprising the entire Board, other than Director seats to be filled by the Non-Member Directors, if any, as determined by Section 4.2; provided that, if a meeting is held for purposes of filling a vacancy pursuant to Section 4.7, then the number of Core Representatives to be elected at a special meeting shall equal the then number of vacancies on the Board, other than vacant Director seats to be filled by the Non-Member Directors, if any. Except as otherwise provided herein, each Core Representative and the Core Director it appoints shall serve a one (1) year term and shall be elected to serve until their respective successors are elected and qualified, or as otherwise provided in these Bylaws. A Core Representative may not be elected more than one time during its term. A Core Representative shall be entitled to remove and replace the individual serving as its Core Director at any time during its term with or without cause by providing notice to the Foundation, which replacement shall be effective immediately unless otherwise set forth in the notice. If a Core Representative ceases to be a Core Member or is otherwise suspended pursuant to Section 2.12, any Core Director appointed by such terminating Core Representative shall be removed from the Board, and the Core Members shall elect an alternative Core Representative to appoint a replacement Core Director at such time as determined by the Board.

Section 4.4 Term of Directors.

(a) Founding Directors. Founding Directors shall each serve three (3) year terms and shall be elected to serve until the first Annual Meeting held following the Initial Term and until the earlier of their removal by their respective Founding Core Member or as otherwise provided in these By-laws.

(b) Core Directors. Core Directors shall each serve one year terms and shall be elected to serve until (i) the next Annual Meeting and until their respective successors are elected and qualified or (ii) the earlier of (A) suspension, expiration or termination of Membership of the Core Member that appointed such Director or (B) the combination, by merger, acquisition or otherwise, of two Core Members that each have representatives on the Board, upon which event one of the two representatives, as designated by the surviving Core Member, shall be deemed to have resigned, or (iii) as otherwise provided in these By-laws. There shall be no prohibition on re-

election or re-designation of any Director following the completion of that Director's term of office.

Section 4.5 Alternate Directors. Each Director (or the Core Member that appointed or is the employer of such Director) may designate in writing (which designation may be withdrawn in writing at any time by such Director or Core Member) an individual to act as a Director in his or her stead, whether for a single meeting or as a standing alternate. Any such alternate Director shall also be an employee of the Core Member that appointed or nominated the original Director. Any such alternate Director shall be entitled to (i) attend and vote at all meetings which the designating Director does not attend, (ii) sign all written consents in lieu of the designating Director, and (iii) otherwise exercise the duties and enjoy the privileges of the designating Director in the absence or unavailability of the designating Director; provided, however, that no such alternate Director may propose a vote or vote upon any Board Committee. In addition, in lieu of making such a substitution, any Director who will be absent for any meeting may deliver a written proxy to the President, authorizing the President to either vote as instructed in such proxy, or to vote in the stead of such absent Director in such manner as the President may believe appropriate. Any such proxy shall be valid only with respect to the meeting and such specific matters (or with respect to all matters, if so desired) as may be stated in such proxy.

(a) Board Requirements. The Board may approve from time to time such reasonable attendance and other requirements as it shall deem to be advisable to ensure that seats on the Board are held by active, contributing individuals. Such rules may provide that any Core Member, who is a Core Representative that has appointed a Director, may be removed as a Core Representative and lose its ability to appoint a representative to the Board in the event that such requirements have not been met, and/or that a Director who fails to meet such requirements shall automatically be deemed to have resigned from the Board, but no such rule may be imposed retroactively.

(b) Chairman of the Board. The Directors have the right, but shall not be required, to appoint an additional person as a Director to act as chairman of the Board, provided that any such person (if so appointed) shall be a person who is considered to be independent of any Core Member.

Section 4.6 Resignation and Removal.

(a) Resignation. Any Director may resign at any time upon notice to the Foundation in writing or by electronic transmission at the principal place of business of the Foundation or to the President or Secretary. Such resignation shall be effective upon receipt unless it is specified within such notice to be effective at some other time or upon the happening of some other event.

(b) Removal for Cause. Unless otherwise specified by law or the Certificate of Incorporation, any Director may be removed "For Cause" by a Super Majority Vote of the other Directors then in office for engaging in any conduct, either within or without the Foundation, that is contrary to the interests of the Foundation or to the advancement of the Foundation's business or industry goals; provided, however, that the Founding Core Member or Core Representative, as applicable, that appointed such removed Director shall be entitled to appoint and elect a replacement for such removed Director to serve for the balance of such removed Director's term.

(c) Removal Without Cause. Any Director who was appointed by a Founding Core Member or Core Representative, as applicable, under Section 4.3(a) or (b) may be removed by that Founding Core Member or Core Representative at any time, and for any reason, or for no reason.

Section 4.7 Vacancies

(a) Replacement of Directors. Vacancies on the Board occurring as a result of the death, resignation, removal or termination of employment of a Director who was appointed and elected by a Founding Core Member or Core Representative, as applicable, may be filled by such Founding Core Member or Core Representative. If the Core Member fails to appoint such Director within sixty (60) days after the effective date of the Director's death, resignation, removal or termination it shall lose the right to appoint a replacement Director to complete the term of the departing Director and the size of the Board of Directors shall be adjusted accordingly. If the vacancy occurred because the Member employing the Director has terminated its Membership, then, (i) if a Founding Director during the Initial Term, the size of the Board of Directors shall be adjusted accordingly; or (ii) if any other Director other than a Founding Director, then the Members shall elect a Core Representative, who shall appoint a Director pursuant to Section 4.3(b). The term of a Director so appointed or elected shall be the unexpired portion of the term of the Director, if any, whom the Director so appointed or elected is replacing.

(b) Vacancy Due to Enlargement. Subject to Section 4.2(b), if the Board increases the number of Directors on the Board pursuant to Section 4.2, whether during the Initial Term or otherwise, the vacancy (other than any vacancy reserved for Non-Member Directors) shall be filled by Core Representatives pursuant to Section 4.3(b). Any such Director elected to fill a vacancy pursuant to this Section 4.7(b) shall serve until the next Annual Meeting and its successor is qualified and elected.

(c) Action by Remaining Board. In the event of a vacancy on the Board, the remaining Directors, except as otherwise provided by law or these By-laws, may exercise the powers of the full Board until the vacancy is filled.

Section 4.8 Place of Meetings. The Board may hold meetings, both regular and special, either within or without the State of Delaware.

Section 4.9 Regular 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 the Board; provided that any Director who is absent when such a determination is made shall be given prompt notice of such determination.

Section 4.10 Special Meetings. Special meetings of the Board may be called by the President, Secretary, or on the written request of two or more Directors, or by one Director in the event that there is only one Director in office. Four (4) business days' notice to each Director, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or five (5) business days' notice by written notice deposited in the mail, shall be given to each Director by the Secretary or by the officer or one of the Directors calling the meeting. A notice or waiver of notice or any waiver by electronic transmission of a meeting of the Board need not specify the purposes of the meeting. Notice of a

meeting need not be given to any Director who signs a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such Director.

Section 4.11 Quorum, Action at Meeting.

(a) General. At all meetings of the Board, a majority of Directors then in office shall constitute a quorum for the transaction of business and the act of a majority of such Directors present at any meeting at which there is a quorum shall be the act of the Board, except as may be otherwise specifically provided by law, the Certificate of Incorporation or these By-laws.

(b) Major Decisions. Notwithstanding any provision of these By-laws to the contrary, the Foundation shall not take, and the Board shall not be empowered or authorized to cause the Foundation to take, the following actions without a resolution taken at a meeting of the Board at which a quorum is present or action by written consent in the manner described in Section 4.13(a) below, and in support of which (i) two-thirds of the Directors present and participating (whether in person, by proxy or otherwise) have voted affirmatively, and (ii) solely during the Initial Term, two-thirds of the Founding Directors present and participating (whether in person, by proxy or otherwise) have voted affirmatively, (together each of (i) and (ii), a "*Super Majority Vote*"):

- (i) Amending the Certificate of Incorporation of the Foundation;
- (ii) Approving or changing the name of the Foundation;
- (iii) Altering the number of Directors; provided that an unanimous vote of the Directors shall be required to alter the number of Directors during the Initial Term;
- (iv) Removal of a Director "For Cause";
- (v) Adopting or recommending to the Members an agreement of merger or consolidation;
- (vi) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of the Foundation's property and assets;
- (vii) Approving or recommending to the Members the dissolution, liquidation or winding up of the Foundation or a revocation of any such dissolution, liquidation or winding up;
- (viii) Amending or modifying the By-Laws or Certificate of Incorporation;
- (ix) Initiating any litigation against a Member;
- (x) Terminating, suspending or reinstatement of a Member's membership, pursuant to Section 2.12 above; and
- (xi) Amending or modifying the IP Policy.

No Director whose attendance and voting rights have been suspended shall be counted for purposes of determining quorum, the number of Directors then in office or the number of Directors required for voting purposes, unless otherwise required by law, these By-laws or the Certificate of Incorporation.

Section 4.12 Adjournment. If a quorum shall not be present at any meeting of the Board, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. In the event that one or more of the Directors shall be disqualified from voting at any meeting upon any matter, then the required quorum as it relates to the consideration of such matter shall be reduced by one for each such Director so disqualified.

Section 4.13 Action Without a Meeting.

(a) By Board. Action required or permitted to be taken at a meeting of the Board may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, signed by a majority of the Directors (or such greater number of Directors as may be required by law or by the By-laws of this Corporation for the taking of any such action at a meeting) and delivered to the Secretary of the Foundation for filing with the Foundation's records.

(b) By Committee. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of any Board Committee may be taken in the manner set forth in the Sections 4.11(a) and (b).

Section 4.14 Telephonic Meetings. Unless otherwise restricted by the Certificate of Incorporation or these By-laws, members of the Board or of any Board Committee may participate in a meeting of the Board or of any Board Committee, as the case may be, by means of conference telephone, video conference equipment, or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at the meeting.

Section 4.15 Inspection Rights. Every Director shall have the absolute right at any time to inspect, copy and make extracts of, in person or by agent or attorney, all books, records and documents of every kind, and to inspect the physical properties of the Foundation.

Section 4.16 Fees and Compensation. Directors shall not receive any stated salary or reimbursements for their services as Directors; provided that, by resolution of a majority of the Board, the Foundation may reimburse Directors for expenses incurred while acting on behalf of the Foundation and/or expenses incurred in attending meetings of the Board, in such amounts as the Board may determine to be appropriate. Nothing herein contained shall be construed to preclude any Director from serving the Foundation in any other capacity as an officer, agent, employee or otherwise, and receiving compensation therefor. The Directors may also approve reimbursement of expenses for members of Board Committees in connection with their service on such Board Committees.

Section 4.17 Board Materials. The Foundation shall exercise best efforts to deliver all materials to be reviewed at meetings of the Board of Directors such number of days prior to the date of a meeting as the Directors may from time to time specify.

ARTICLE V COMMITTEES

Section 5.1 Committees of the Board of Directors.

(a) Generally. The Board may, by resolution adopted by a majority of the Directors then in office (provided a quorum is present), create Board Committees, each consisting of one or more Directors appointed by the Board, as the Board may from time to time deem advisable, to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board, subject to the limitations imposed by the Certificate of Incorporation or by these By-laws. The Board may designate one or more Directors as alternate members of any Board Committees, who may replace any absent member at any meeting of such Board Committees. Any such Board Committee or Board Committees shall have such powers, duties and name or names as may be determined from time to time by resolution adopted by the Board. Each Board Committee shall keep regular minutes of its meetings and make such reports to the Board as the Board may request

(b) Meetings of Committees of the Board. Except as otherwise provided in these By-laws or by resolution of the Board, each Board Committee may adopt, subject to approval by the Board, its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and shall meet as provided by such rules, but unless otherwise provided by resolution of the Board or in such rules, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the conduct of the business of the Board.

(c) Term of Office of Members of Committees of the Board. Each member of a Board Committee shall serve for such term as shall be established at the time of his or her election.

Section 5.2 Member Committees

(a) Technical Steering Committee. The Board may establish or disband a technical steering committee consisting of (i) a project lead from each top level project, (ii) a representative designated by each of the Core Members; and (iii) such number of individuals to be elected by the active technical steering committee members as may be specified and under such procedures as may from time to time approved by the Board (the "**Technical Steering Committee**"). The operation of the Technical Steering Committee shall be governed by the rules of process of such committee as from time to time approved by the Board. The Technical Steering Committee shall be under the leadership of a Technical Steering Committee chair (the "**Technical Steering Committee Chair**") elected by the Technical Steering Committee, who shall serve at the pleasure of the Technical Steering Committee and the Board. The Technical Steering Committee Chair shall be elected annually with no term limits. The Technical Steering Committee Chair shall be permitted to attend meetings of the Board and shall, if requested by the Board, present to the Board

a report of the Technical Steering Committee. The Board shall not be bound by any advice or decision of the Technical Steering Committee.

(b) Other Member Committees. In addition to the Technical Steering Committee, from time to time, the Board may establish or disband committees to be appointed by the Members of the Foundation ("**Member Committees**"). Membership attendance and voting rights in all Member Committees shall be as specified in Article II, and any such Member Committee may operate under such further rules of process as it may propose and which are approved by the Board. Unless otherwise specified in these By-laws or by the Board, each Member Committee may have such sub-committees, working groups and special interest groups as from time to time may be approved by such Member Committee, with the strategic direction established by the Board (each a "**Working Group**"). The Board shall not be bound by any advice or decision of any Member Committee.

Section 5.3 Participation. Participation in Working Group Projects and Working Groups sponsored by the Foundation shall not be limited to Members, but may be subject to such operating procedures and terms of participation and other rules as may from time to time be approved by the Board.

ARTICLE VI

OFFICERS

Section 6.1 Officers. The officers of the Foundation shall be a President, a Treasurer and a Secretary. The Foundation may also have, at the discretion of the Board, an Executive Director, one or more Vice-Presidents, one or more Assistant Secretaries and/or Assistant Treasurers, and such other officers (any or all of which need not be Directors, if so determined by Board) with such titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3. A Chairman of the Board shall be nominated by Core Members, and shall preside over meetings of the Board.

Section 6.2 Vacancies. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-laws for regular elections to such office and may be filled by the Board, at its discretion.

Section 6.3 Election. The Board at its annual meeting each year shall choose a President, a Secretary and a Treasurer. Other officers may be elected by the Board at any such meeting, and any or all officers may be replaced, at any other meeting of, or by written consent of, the Board.

Section 6.4 Tenure. Each officer of the Foundation shall hold office until his or her successor is chosen and qualifies, unless a different term is specified in the vote choosing or electing him, or until his or her earlier death, resignation or removal. Any officer elected by the Board may be removed at any time by the Board or a Board Committee duly authorized to do so. Any officer may resign by delivering his or her written resignation to the Foundation at its principal place of business or to the Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event.

Section 6.5 President and Executive Director

(a) President. The President shall have all of the powers normally associated with the role of chief executive officer and preside at all meetings of the Board (in the absence of a Chairperson) and the Members. The President shall oversee the management of the business of the Foundation and see that all orders and resolutions of the Board are carried into effect. Without limiting the foregoing, the President shall:

(i) Execute bonds, mortgages, and other contracts requiring a seal, under the seal of the Foundation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other officer or agent of the Foundation; and

(ii) Oversee the Executive Director (if any).

(b) Executive Director. The Executive Director (if any) shall preside over the day-to-day affairs of the Foundation under the direction of the Board and the President and perform such other duties and have such other powers as the Board or the President may from time to time prescribe.

Section 6.6 Vice-President. In the absence of the President or in the event of his or her inability or refusal to act, a Vice-President, or if there be more than one Vice-President, the Vice-Presidents in the order designated by the Board (or in the absence of any designation, then in the order determined by their tenure in office), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. The Vice-Presidents shall perform such other duties and have such other powers as the Board or the President may from time to time prescribe.

Section 6.7 Secretary. The Secretary shall have such powers and perform such duties as are incident to the office of Secretary under the Act, including without limitation recording all the proceedings of the meetings of the Foundation and of the Board. The Secretary, and each Assistant Secretary, shall have authority to affix the Corporate seal to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board may give general authority to any other officer to affix the seal of the Foundation and to attest the affixing by such officer's signature.

Section 6.8 Assistant Secretaries. Any Assistant Secretary shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary. In the absence of the Secretary or any Assistant Secretary at any meeting of Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

Section 6.9 Treasurer. The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board or the President. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Foundation and shall deposit all moneys and other valuable effects in the name and to the credit of the Foundation in such

depositories as may be designated by the Board, taking proper vouchers for such disbursements, and shall render to the President and the Board, when the President or Board so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Foundation.

Section 6.10 Assistant Treasurers. Any Assistant Treasurer shall, in the absence of the Treasurer or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Treasurer.

Section 6.11 Compensation. The compensation, if any, of the officers shall be fixed from time to time by the Board, and no officer shall be prevented from receiving such compensation by reason of the fact that the officer is also a Director of the Foundation.

ARTICLE VII NOTICES

Section 7.1 Delivery

(a) Whenever, under the provisions of law, or of the Certificate of Incorporation or these By-laws, written notice is required to be given to any Director or Member, such notice may be given by mail, addressed to such Director or Member, at his, her or its address as it appears on the records of the Foundation, with postage thereon prepaid. Unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, and subject to the provisions below relating to notice by electronic transmission to Members, written notice may also be given by electronic mail, telecopy, commercial delivery service, or similar means, addressed to such Director or Member at his, her or its physical, email, or telecopy address or number as it appears on the records of the Foundation. Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by the Foundation under any provision of law, the Certificate of Incorporation, or the By-laws, unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, shall be effective if given by a form of electronic transmission consented to by the Member to whom the notice is given.

(b) Notice given pursuant to this Section shall be deemed given: (i) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Director, when directed to the number for such Director as it appears on the records of the Foundation; (ii) if by electronic mail to (A) a Member, when directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Director, when directed to the electronic mail address for such Director as it appears on the records of the Foundation; (iii) if by a posting on an electronic network together with separate notice to the Member or Director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (iv) if by any other form of electronic transmission, when directed to the Member or Director; (v) if by in-hand delivery or oral notice, at the time it is actually given; (vi) if by mail, at the time when the same shall be deposited in the United States mail; and (vii) if by commercial delivery carrier or similar means, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by the Foundation or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Foundation that the notice has been given

by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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

(d) Without limiting the foregoing, the Foundation adopts electronic mail as its principal source of communication with its Members. Each Member acknowledges and agrees that the Foundation shall not be under any obligation (except as required by law or these By-laws) to send any notice to any Member by any means other than electronic mail, and it is therefore the responsibility of each Member to avail itself of and make such arrangements as may be necessary to receive notice in such fashion.

Section 7.2 Waiver of Notice. Whenever any notice is required to be given under the provisions of law or of the Certificate of Incorporation or of these By-laws, a waiver thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, or a waiver by electronic transmission by the person entitled to notice, shall be deemed equivalent thereto.

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Actions other than by or in the Right of the Foundation. Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, the Foundation shall indemnify any 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 (other than an action by or in the right of the Foundation) by reason of the fact that he or she is or was a Director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Foundation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 8.2 Actions by or in the Right of the Foundation. Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, the Foundation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened,

pending or completed action or suit by or in the right of the Foundation to procure a judgment in its favor by reason of the fact that he or she is or was a Director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Foundation; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 Success on the Merits. To the extent that any person described in Section 8.1 or 8.2 of this Article VIII has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in said Sections, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 8.4 Specific Authorization. Any indemnification under Section 8.1 or 8.2 of this Article VIII (unless ordered by a court) shall be made by the Foundation only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (a) by a Super Majority Vote of such Directors who were not parties to such action, suit or proceeding, even though less than a quorum or (b) by the Members of the Foundation.

Section 8.5 Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding shall be paid by the Foundation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of any person described in said Section to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by the Foundation as authorized in this Article VIII.

Section 8.6 Non-Exclusivity. The indemnification and advancement of expenses provided by, or granted pursuant to, the other Sections of this Article VIII shall not be deemed exclusive of any other rights to which those provided indemnification or advancement of expenses may be entitled under any By-law, agreement, vote of disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office.

Section 8.7 Jurisdiction of Delaware Court of Chancery. The Delaware Court of Chancery is vested with exclusive jurisdiction to hear and determine all actions for advancement of expenses or indemnification. The Delaware Court of Chancery may summarily determine the Foundation's obligation to advance expenses (including attorney's fees).

Section 8.8 Insurance. The Board may authorize the Foundation to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Foundation would have the power to indemnify him or her against such liability under the provisions of this Article VIII.

Section 8.9 Continuation of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall continue as to a person who has ceased to be a Director, officer, employee or agent of the Foundation and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.10 Severability. If any word, clause or provision of this Article VIII or any award made hereunder shall for any reason be determined to be invalid, the provisions hereof shall not otherwise be affected thereby but shall remain in full force and effect.

Section 8.11 Intent of Article. The intent of this Article VIII is to provide for indemnification and advancement of expenses to the fullest extent permitted by Section 145 of the Act. To the extent that such Section or any successor section may be amended or supplemented from time to time, this Article VIII shall be amended automatically and construed so as to permit indemnification and advancement of expenses to the fullest extent from time to time permitted by law.

ARTICLE IX

BOOKS AND RECORDS

Section 9.1 Books and Records. The Foundation shall keep adequate and correct books and records of account, tax records, minutes of the proceedings of the Members, the Board and Board Committees, and a record of the Members giving their names and addresses and the class of Membership held by each.

Section 9.2 Form of Records. Minutes shall be kept in written form. Other books and records shall be kept either in written form or in any other form capable of being converted into written form.

Section 9.3 Reports to Directors, Members and Other. The Board shall cause such reports to be prepared, filed and/or distributed as may be required.

Section 9.4 Record Date. In order that the Foundation may determine the Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or to express consent to or dissent from a corporate action in writing without a meeting, or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be (i) more than sixty (60) days prior to the adoption of the resolution by the Board and (in the case of consent to corporate action in writing without a meeting) the date upon which such written consent is delivered to the Members, nor (ii) later than the date upon which the Board adopts the resolution

proposing the taking of such action. In the absence of such a determination, the record date shall be at the close of business on the day on which the Board adopts the resolution proposing the taking of such action.

Section 9.5 Registered Members. The Foundation shall be entitled to recognize the exclusive right of a person registered on its books as a Member or a representative of a Member to receive distributions, if any, and to vote, if such records indicate that such person is a Voting Member or a representative of a Voting Member, and to hold liable for Financial Obligations each Member registered on its books, and shall not be bound to recognize any equitable or other claim to or interest in Membership on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Act.

Section 9.6 Contributions. The Board is authorized to undertake actions to ensure that all code and materials contributed by the Foundation complies with the terms of the IP Policy, or other applicable guidelines and agreements as established or approved in accordance with these By-laws.

Section 9.7 Expenses. Unless otherwise approved in accordance with the policies established by the Board, each Member will bear its own costs and expenses in connection with its performance of its rights and duties in respect of the Foundation, including without limitation, compensation of its employees, and all travel and living expenses associated with any Member's participation in any meetings and conferences called in connection with the activities of the Foundation.

Section 9.8 Investments. The Foundation funds may be retained in whole or in part in cash or be invested and reinvested from time to time in such property, real, personal or otherwise, or stocks, bonds or other securities, as the Board in its discretion may deem desirable.

ARTICLE X

CERTAIN TRANSACTIONS

Section 10.1 Transactions with Interested Parties.

(a) No contract or transaction between the Foundation and one or more of its Directors or officers, or between the Foundation and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such Director or officer (or other director or officer) is present at or participates in the meeting of the Board or Board Committee which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

(b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or such Board Committee, and the Board or such Board Committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or

(c) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Voting Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Voting Members; or

(d) The contract or transaction is fair as to the Foundation as of the time it is authorized, approved or ratified, by the Board, a Board Committee, or the Voting Members.

(e) Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or Board Committee that authorizes the contract or transaction.

ARTICLE XI

GRANTS, CONTRACTS, LOANS, ETC.

Section 11.1 Grants. The making of grants and contributions, and otherwise rendering financial assistance for the Purpose of the Foundation, may be authorized by the Board. The Board may authorize any officer or officers, agent or agents, in the name of and on behalf of the Foundation to make any such grants, contributions or assistance.

Section 11.2 Execution of Contracts. The Board may authorize any officer, employee or agent of the Foundation, in the name and on behalf of the Foundation, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the President shall be authorized to execute such contracts and instruments on behalf of the Foundation as he or she may deem to be reasonably necessary, subject to such standing limits as may from time to time have been established by vote of the Board, but must inform the Board of any such actions.

Section 11.3 Checks, Drafts, Etc. All checks, drafts and other orders for the payment of money out of the funds of the Foundation, and all notes or other evidences of indebtedness of the Foundation, shall be signed on behalf of the Foundation in such manner as shall from time to time be determined by resolution of the Board.

Section 11.4 Deposits. The funds of the Foundation not otherwise employed shall be deposited from time to time to the order of the Foundation in such banks, trust companies, or other depositories, or shall be otherwise invested, as the Board may select or direct, or as may be selected or directed by an officer, employee or agent of the Foundation to whom such power may from time to time be specifically delegated by the Board.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Fiscal Year. The fiscal year of the Foundation shall be determined, and may be changed, by resolution of the Board.

Section 12.2 Reserves. The Directors may set apart out of any funds of the Foundation a reserve or reserves for any proper purpose and may abolish any such reserve.

Section 12.3 Seal. The Board may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Foundation, the year of its organization and the word “Delaware”. The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise. The seal may be altered from time to time by the Board.

Section 12.4 Confidentiality.

(a) General. All information disclosed by any participant during any official meeting or activity of the Foundation, including but not limited to Member meetings, Member Committee Meetings, Corporation meetings, Board meetings, meetings of Board Committees and sub-committees thereof, electronic mail or the like, shall be deemed to have been disclosed on a non-confidential basis, but without waiver of any rights represented by valid patents, patent applications, and Federal and international statutory copyrights.

(b) Exceptions. Notwithstanding anything to the contrary in Section 12.4(a), the Members agree to treat confidential and to use the same care and discretion to avoid disclosure, publication or dissemination outside the receiving Members any information which:

(i) The Board has determined should be dealt with on a confidential basis, including information produced for the Board, discussions at, and decisions taken at, Board meetings, Board Committee meetings or Member committee meetings with respect to such matters; or

(ii) A Member requests in writing that particular information to be disclosed by or on its behalf shall be treated as confidential. Any agreement to this effect shall, subject to securing the prior written agreement of the President, be governed by a non-disclosure agreement between the relevant Member and the Foundation.

(c) No Obligation to Disclose. No Member shall at any time be required to exchange proprietary information with any other Member solely by reason of its being a Member of the Foundation.

Section 12.5 Trademarks and Copyrights. No express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other intellectual property right of any Member is or shall be deemed to be granted to the Foundation or to any other Member by reason of its membership in or participation in the activities of the Foundation, except as may be provided in a separate written agreement or IP Policy.

ARTICLE XIII

ANTITRUST COMPLIANCE

Section 13.1 General

(a) The Foundation will conduct all of its activities in conformance with all international, U.S. federal and state antitrust laws and competition laws, including but not limited to the Sherman Act, the Clayton Act, the Robinson-Patman Act, the Federal Trade Commission Act and the EU Competition Regulations. The Board and the President shall consult legal counsel

and seek legal review whenever necessary to insure that the activities of the Foundation are conducted in conformance with such laws.

(b) Each of the Members of the Foundation is committed to fostering competition in the development of new products and services, and the activities of the Foundation are intended to promote such competition. Each Member acknowledges that it may compete with other Members in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable state, federal or international antitrust laws or regulations. Without limiting the generality of the foregoing, Members that are competitors shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers, or any other topic that would be prohibited by applicable antitrust laws.

(c) Each Member shall assume responsibility to provide appropriate legal counsel to its representatives acting under these By-laws regarding the importance of limiting the scope of their discussions to the topics that relate to the Purpose of the Foundation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

Section 13.2 Availability of Work Product. It is the good faith objective of the Foundation to make all open source software and other work product (“**Work Product**”) available (a) as soon as its development by the Foundation is complete on the same terms to all Members who have not participated in the development or determination of such Work Product as well as to all those Members who have participated, (b) at the same point in time to all Members, and (c) to all non-Members on the same fair and reasonable terms and conditions, as specified in the IP Policy.

Section 13.3 No Obligation to Endorse. No Member shall, by reason of its Membership or participation in the Foundation or otherwise, be obligated to license from the Foundation, use or endorse any intellectual property developed or endorsed by the Foundation, or to conform any of its products to any platform developed or adopted by the Foundation, nor shall any such Member be precluded from independently licensing, using or endorsing similar intellectual property, platform, software, specifications or documentation developed by it or by others. No provision of these By-laws shall be interpreted to prevent any Member from engaging in other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any Member.

ARTICLE XIV

AMENDMENTS

Except where such power is expressly limited by law, the Certificate of Incorporation or these By-laws as to any specific action, these By-laws may be altered, amended or repealed, and new By-laws may be adopted, in each case by an affirmative vote of a two-thirds majority of all Core Members then in good standing and the Super Majority Vote of the Board.