

**BYLAWS  
OF  
OPENSOCIAL FOUNDATION**

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**BYLAWS  
OF  
OPENSOCIAL FOUNDATION**

**ARTICLE I  
PRINCIPAL OFFICE**

The principal office of this corporation shall be located in the county of San Francisco, California.

**ARTICLE II  
MEMBERSHIP**

Section 1. Classification of Members. This corporation shall have one class of members with voting rights as specified in these Bylaws. The qualifications or eligibility requirements for membership and the rights and obligations of members shall be as provided in these Bylaws or under applicable law. The Board of Directors may, by resolution, establish one or more categories of nonvoting associates who may be referred to as “members,” and provide for their rights and obligations (including the obligation to pay dues); however, the terms “member” and “membership,” as used in these Bylaws, shall refer only to voting members.

Section 2. Qualifications for Membership. Membership is open to all individuals who request to join, and submit an application that is accepted by the Board.

Section 3. Admission of Members. Any application for membership must be made in the manner determined by the Board of Directors, from time to time. The Board or a person or committee authorized by the Board will review each application and, if appropriate, certify that the applicant is acceptable for membership. Membership shall commence upon such certification and be renewable on an annual basis in the manner determined by the corporation.

Section 4. Membership Dues. No dues shall be required.

Section 5. Assessments. Membership in this corporation shall not be assessable.

Section 6. Good Standing. Those members who are not suspended, shall be members in good standing of this corporation.

Section 7. Membership Roster. This corporation shall keep a membership roster containing the name of each member and the last address provided to this corporation by the member for purposes of notice.

Section 8. Non-liability of Members. No member of this corporation shall be personally liable for the debts, liabilities, or obligations of this corporation.

Section 9. Transferability of Memberships. Membership in this corporation, or any right arising therefrom, may not be transferred or assigned. Any attempted transfer shall be void.

Section 10. Termination of Membership. Membership in this corporation shall continue until terminated as provided in this Section, or until the member dies, dissolves, or resigns in a writing delivered to the Secretary or President of this corporation.

A. Basis for Termination. Membership in the corporation shall terminate upon the occurrence of any of the following events or conditions:

i. Expiration. If a membership is issued for a period of time, such membership shall automatically terminate when such period of time has elapsed, unless the member elects to renew the membership.

ii. Failure to Qualify. On a good faith finding by the Board of Directors, made in accordance with this Section, that a member no longer meets the qualifications set forth in Article II, Sections 2 and 3, such member's membership in this corporation shall terminate.

iii. Interests of Corporation. On a good faith finding by the Board of Directors, made in accordance with this Section, that continued participation by the member in this corporation as a member is not in the best interests of this corporation and the furtherance of its purposes.

B. Termination Procedures. In the case of proposed termination of a membership under subsection A. iii above, the following procedures shall apply:

i. Notice. This corporation shall send a written notice to the member, setting forth the proposal for termination, the reasons for it, the date on which the proposed termination shall become effective, and the date, time, and place (if any) of the hearing described in the next subsection. Such notice shall be sent at least fifteen days before the proposed date of termination, and at least ten days before the date set for the hearing, by first-class or registered mail, to the last address provided by the member to the corporation for purposes of notice.

ii. Hearing. The member shall be given an opportunity to be heard, either orally or in writing, not less than five days before the effective date of the proposed termination, by the Board or the person or committee authorized by the Board to decide whether the proposed termination will take place. If the member does not appear and has not notified the Secretary of any adequate reason therefor, or chooses not to appear at the hearing, the termination shall be effective automatically on the proposed date of termination.

iii. Determination. Following the hearing date, the Board (or the person or committee authorized by the Board to decide whether the proposed termination will take place) shall decide whether or not the member should in fact be terminated, suspended, or sanctioned in some other way. That decision shall be final, and the member shall be promptly notified of it. If a member is terminated hereunder, all membership rights of such member in the

corporation shall cease on the effective date of the termination stated in the notice given pursuant to subsection B. i above.

### **ARTICLE III MEMBERSHIP RIGHTS**

Section 1. Voting Rights. Subject to these Bylaws, members of this corporation shall have the right to vote, as set forth in these Bylaws, on:

(a) the election of two rotating community seats on the Board of Directors (“Community Directors”);

(b) the removal of Community Directors pursuant to Section 5222 of the California Nonprofit Public Benefit Corporation Law, as provided in Article V, Section 6 of these Bylaws;

(c) any amendment to these Bylaws that materially and adversely affects member voting rights, and all amendments to the Articles of Incorporation of this corporation, except for amendments permitted to be adopted by the Board of Directors alone under Section 5812(b) of the California Nonprofit Public Benefit Corporation Law;

(d) the disposition of all or substantially all of the assets of this corporation;

(e) any merger of this corporation;

(f) any dissolution of this corporation; and

(g) any other matters that may properly be presented to members for a vote, pursuant to this corporation’s Articles, Bylaws, or action of the Board of Directors, or by operation of law.

Except as set forth above, members of this corporation shall have no other voting rights.

Section 2. Inspection Rights.

A. Articles and Bylaws. This corporation shall keep at its principal office in California current copies of the Articles of Incorporation and Bylaws of this corporation, which shall be open to inspection by members at all reasonable times. If this corporation has no principal office in California, the Secretary shall furnish such copies to any member on written request therefor.

B. Accounting Records; Minutes. On written request, any member (in person or through an agent or attorney) may inspect and copy the accounting books and records of this corporation and the minutes of the proceedings of the members, the Board, or any Board Committee, at any reasonable time and for a purpose reasonably related to the member’s interests as a member.

C. Membership Records. The right of members to have access to the membership records of this corporation shall be governed by Sections 6330 through 6332 of the California Nonprofit Public Benefit Corporation Law.

Section 3. Other Rights. In addition to the rights described in these Bylaws, members of this corporation shall have any other rights afforded voting members under the California Nonprofit Public Benefit Corporation Law.

## **ARTICLE IV MEMBER MEETINGS AND VOTING**

Section 1. Member Voting. Each member in good standing shall have one vote on each matter on which the members are entitled to vote.

Section 2. Annual Member Meetings. In lieu of an annual meeting of the membership, members will take action by written ballot for the purpose of electing directors and transacting such business, if any, that may require the vote of the members. The annual written ballot will be distributed on a date and time determined by the Board of Directors.

Section 3. Special Meetings of Members.

A. Who May Call. Special meetings of the members may be called (i) by the Board of Directors, or the President, or (ii) on the written request of five percent of the membership.

B. Procedures for Calling Special Meetings Requested by Members. If a special meeting is called by members, the requesting members shall deliver a written notice specifying the general nature of the business proposed to be transacted personally, by registered mail, facsimile transmission, or by electronic transmission such as email in compliance with Article X, Section 5, of these Bylaws to the President, any Vice President, or the Secretary of this corporation. The requested meeting will be held not less than thirty-five, nor more than ninety, days following the receipt of the request. If appropriate notice of such a meeting is not given within twenty days after delivery of the request, the requesting members may give the notice. Nothing contained in this subsection shall be construed as limiting, fixing, or affecting the time of any meeting of members called by the Board of Directors, the Chairman of the Board (if any), or the President.

Section 4. Record Dates. For any notice, vote (at a meeting or by written ballot), or exercise of rights, the Board of Directors may, in advance, by resolution, fix a record date, and only members of record on the date so fixed shall be entitled to notice, vote, or exercise rights, as the case may be. For this purpose, a person holding a membership as of the close of business on the record date shall be deemed a member of record.

A. Notice of Meetings. Unless otherwise fixed by the Board of Directors, the record date for the purpose of determining which members are entitled to notice of any members' meeting, shall be the business day preceding the date on which notice for that meeting

is given. If the Board, by resolution, fixes a record date for notice, the record date shall be not less than ten, nor more than ninety, days before the date of the meeting.

B. Voting at Meetings. Unless otherwise fixed by the Board of Directors, the record date for the purpose of determining which members are entitled to vote at any members' meeting, shall be the day sixty days before the date of that meeting. If the Board, by resolution, fixes a record date for voting, the record date shall be not more than sixty days before the date of the meeting.

C. Voting by Written Ballot. Unless otherwise fixed by the Board of Directors, the record date for the purpose of determining which members are entitled to vote by written ballot shall be the day sixty days before the day on which the first written ballot is mailed or solicited. If the Board, by resolution, fixes a record date for voting, the record date shall be not more than sixty days before the day on which the first written ballot is mailed or solicited.

D. Other Lawful Action. Unless otherwise fixed by the Board of Directors, the record date for the purpose of determining which members are entitled to exercise any rights in respect to any other lawful action, shall be the date on which the Board adopts the resolution relating thereto or the sixtieth day before the date of such other action, whichever is later. If the Board, by resolution, fixes a record date for determining entitlements, the record date shall be not more than sixty days before the date of such other action.

Section 5. Time and Manner of Notice of Meetings. The Secretary shall give written notice of each members' meeting to each member who, as of the record date for notice of the meeting, would be entitled to vote at such meeting. The notice shall be delivered to the last address provided by the member to this corporation for purposes of notice, either personally or by telegram, facsimile transmission, electronic transmission in compliance with Article X, Section 6, or first-class, registered, or certified mail not less than ten nor more than ninety days before the date of such meeting, or by other mail not less than twenty nor more than ninety days before the date of such meeting.

Section 6. Contents of Notice. The notice shall state the place, date and time of the meeting and in the case of special meetings, the general nature of the business to be transacted, and no other business may be transacted. In the case of the annual written ballot, the ballot itself shall be considered the notice and shall set forth the names of all those who are nominees for director as of the date of the notice, in addition to any other matters on which the members are being asked to vote.

Section 7. Notice of Certain Actions Required. Unless the vote of the membership shall be unanimous, any of the following votes shall be valid only if the general nature of the action approved was stated in the notice of the meeting at which the vote occurred: (a) to remove a Community Director without cause, (b) to fill a Community Director vacancy on the Board, (c) to amend this corporation's Articles of Incorporation, or (d) to voluntarily dissolve this corporation.

Section 8. Member Quorum. Five percent of the memberships then in effect shall constitute a quorum. A meeting at which a quorum is initially present may continue to

transact business notwithstanding the withdrawal of enough members to leave less than a quorum, so long as any action taken thereafter is approved by at least a majority of the required quorum.

Section 9. Act of the Members. Every decision or act made or done by a majority of voting members present and voting at a duly held meeting at which a quorum is present is the act of the members, unless the law, the Articles of Incorporation of this corporation, or these Bylaws require a greater number.

Section 10. Manner of Voting.

A. Voting at Meetings. Voting at meetings may be by voice or by secret ballot, provided that any vote designated by the chairman of the meeting, in his or her discretion, or requested by ten percent of the voting power present at the meeting, shall be conducted by secret ballot. Subject to any guidelines and procedures that the Board of Directors may adopt, members not physically present in person at a face-to-face membership meeting may, by electronic transmission in compliance with Section 13 of this Article, or by electronic video screen communication, participate in the meeting, be deemed present in person and vote at the meeting.

B. Proxy Voting Prohibited. Proxy voting shall not be permitted on any matter put to the vote of the members.

C. Cumulative Voting Prohibited. Cumulative voting shall not be permitted.

D. Action by Written Ballot Without a Meeting.

i. Generally. As provided in Section 2, the election of Community Directors shall be by written ballot, without a meeting. Any other action required or permitted to be taken by members at a meeting may be submitted for a vote by written ballot pursuant to this Section without a meeting.

ii. Content of Written Ballots. Any written ballot distributed to the members to vote on a matter shall set forth the proposed action and provide an opportunity to specify approval or disapproval of the proposal.

iii. Time for Return of Ballots. All written ballots shall provide a reasonable time within which to return them to this corporation and each ballot shall state on its face or in an accompanying notice the date by which it must be returned in order to be counted.

iv. Requirements for Valid Action. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the required quorum set forth in these Bylaws, and the number of approvals equals or exceeds the number of votes that would be required to approve the action if the vote were taken at a meeting of the members.

v. Solicitation Rules. Written ballots shall be solicited in a manner consistent with the requirements for notice of members' meetings. This corporation may send

the ballot and any related materials, and the member may return the ballot, by electronic transmission, in compliance with Article X, Sections 5 and 6, of these Bylaws, as applicable. All solicitations of written ballots shall indicate the number of responses needed to meet the quorum requirement for valid action and shall state the percentage of affirmative votes necessary to approve the measure submitted for membership approval.

vi. Revocation of Written Ballots. If a member who has cast a written ballot desires to change his or her vote, the member may do so provided he or she so notifies the Secretary of this corporation in writing prior to close of the balloting period and casts a new ballot within the balloting period.

E. Election Ballots. Any ballot used in the election of directors shall set forth the names of the candidates who have been properly nominated at the time the ballot is issued. The ballot shall also provide a space for members to designate a vote for a candidate not on the ballot.

#### Section 11. Waiver of Notice or Consent by Members.

A. Generally. Any action of the members taken at a meeting where a quorum is present but for which proper notice was not given, will be valid if, either before or after the meeting, each member entitled to vote who was not present at the meeting signs (i) a waiver of notice, (ii) a consent to holding the meeting, or (iii) an approval of the minutes, in any case in writing, which may include electronic mail or facsimile transmitted by a member in compliance with Article X, Section 5 of these Bylaws. The waiver of notice, consent to holding the meeting, or approval of minutes need not specify the purpose or general nature of business to be transacted at such meeting, unless action is taken or proposed to be taken on matters specified in Section 7 of this Article, in which case the waiver, consent, or approval must state the general nature of the matter. All such waivers, consents, or approvals shall be filed with the minutes of the meeting.

B. Effect of Attendance at Meeting. Attendance by a member at a meeting shall also constitute a waiver of notice of that meeting, unless the member attends for the sole purpose of objecting at the beginning of the meeting to the transaction of any business due to the inadequacy or illegality of the notice. Attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the notice of the meeting which are required to be described therein pursuant to Section 7 of this Article, if that objection is expressly made at the meeting.

Section 12. Action by Unanimous Written Consent. Any action required or permitted to be taken by the members at a meeting, may be taken without a meeting if all members shall individually or collectively consent to such action in writing. If action is taken by written consent, the consent(s) shall be filed with the corporate minutes. Written consent shall include electronic mail or facsimile transmitted by a member in compliance with Article X, Section 5, of these Bylaws. The action by written consent shall have the same force and effect as the unanimous vote of the members.

Section 13. Meetings by Electronic Transmission. A meeting of the members may be conducted, in whole or in part, by electronic transmission in compliance with Article X, Sections 5 and 6, as applicable, or by electronic media screen communication, so long as all of the following apply:

(a) This corporation has implemented reasonable measures to provide members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings; and

(b) If any member votes or takes other action at the meeting by means of electronic transmission or electronic video screen communication, this corporation maintains a record of any vote or action taken by a member by means of electronic transmission.

Any request by this corporation for a member's consent to conduct a meeting by electronic transmission shall include a notice that, absent consent of the member, the face-to-face membership meeting shall be held at a physical location at which members may attend and participate in person.

## **ARTICLE V BOARD OF DIRECTORS**

Section 1. Corporate Powers; Exercise By Board. This corporation shall have powers to the full extent allowed by law. All powers and activities of this corporation shall be exercised and managed by the Board of Directors of this corporation directly or, if delegated, under the ultimate direction of the Board.

Section 2. Number and Qualification of Directors. The number of directors shall be seven. There shall be two categories of directors, as follows: (1) each then-current "Designator" identified in the Designators Agreement shall designate one of five directors (the "Corporate Directors") in accordance with the terms of the Designators Agreement; and (2) the members shall nominate and elect the two Community Directors. Any amendment of the preceding sentence shall require the approval of the members. Directors of this corporation must be members of this corporation in good standing at the time of their election. The "Designators Agreement" means the Designators Agreement dated as of August 22, 2008, as amended, which Designators Agreement shall be maintained by and entered into the records of the corporation.

Section 3. Limitations on Interested Persons. At all times, not more than forty-nine percent of the directors of this corporation may be interested persons. An interested person means either:

(a) any person currently being compensated by this corporation for services rendered to it within the previous twelve months, whether as a full-time or part-time employee, independent contractor, or otherwise, excluding any reasonable compensation paid to a director in his or her capacity as director; or

(b) any brother, sister, ancestor, descendant, spouse, brother-in-law, sister-in-law, son-in-law, daughter-in-law, mother-in-law, or father-in-law of any such person.

Section 4. Term of Office of Directors. Except as otherwise set forth in the Designators Agreement, the Corporate Directors shall be designated as of the annual meeting of the Board for a term of one year. The Community Directors shall be elected annually by the members by written ballot in lieu of the meeting, for a term of one year. Except as otherwise set forth in the Designators Agreement, each director shall hold office until expiration of the term and until a successor has been elected.

Section 5. Vacancies. A vacancy shall be deemed to exist on the Board in the event that the actual number of directors is less than the authorized number for any reason. Vacancies among the Corporate Directors shall be filled in accordance with the Designators Agreement, and vacancies among the Community Directors shall be filled by the members, in each case for the unexpired portion of the term.

Section 6. Resignation and Removal of Directors. Resignations shall be effective upon receipt in writing by the President, or the Secretary of this corporation, unless a later effective date is specified in the resignation. A Corporate Director may be removed by the corporation designating such Corporate Director, by the vote of at least five directors (if there are more than five directors then in office), or by the unanimous vote of the Board (if there are five or fewer directors then in office), in each case for any reason, at any time, subject to the terms of the Designators Agreement. The members may remove any Community Director at any time, with or without cause. If there are fewer than fifty members, the vote of a majority of all members shall be required to remove a Community Director.

Section 7. Annual Board Meetings. A meeting of the Board of Directors shall be held at least once a year. Annual meetings shall be called by the Chairman of the Board (if any), the President (if any), or any two directors, and noticed in accordance with Section 9 of this Article.

Section 8. Special Board Meetings. Special meetings of the Board of Directors may be called by the Chairman of the Board (if any), the President (if any), or any two directors, and noticed in accordance with Section 9 of this Article.

Section 9. Notice. Notice of the annual meeting and any special meetings of the Board of Directors shall state the date, place, and time of the meeting and shall be given to each director at least four days before any such meeting if given by first-class mail or forty-eight hours before any such meeting if given personally or by telephone, including a voice messaging system, or by other electronic transmission such as e-mail, in compliance with Article X, Section 5 of these Bylaws.

Section 10. Waiver of Notice. The transactions of any meeting of the Board of Directors, however called and noticed and wherever held, shall be valid as though taken at a meeting duly held after proper call and notice, if a quorum is present, and if, either before or after the meeting, each of the directors not present provides in writing a waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent

need not specify the purpose of the meeting. All waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting the lack of adequate notice before the meeting or at its commencement.

Section 11. Quorum. Five of the directors then in office, or, if there are fewer than five directors then in office, all the directors then in office, shall constitute a quorum; provided that in no event shall the required quorum be less than one-fifth of the authorized number of directors or two directors, whichever is larger. The act of at least five-sevenths of the directors present at a meeting at which a quorum is present, if there are at least five directors then in office, or the act of all the directors then in office, if there are fewer than five directors then in office, shall be the act of the Board of Directors, except as otherwise provided in Article V, Sections 5 (filling Board vacancies), 12 (taking action without a meeting), and 18 (approving and amending IPR Documents); Article VIII, Section 3 (approving self-dealing transactions); Article IX, Section 2 (approving indemnification); and Article X, Section 7 (amending Bylaws), of these Bylaws; or in the California Nonprofit Public Benefit Corporation Law. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least five-sevenths of the required quorum for such meeting. If the number of directors required to take any action is fractional, such number shall be rounded up to the nearest integer.

Section 12. Action Without a Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting if all members of the Board (other than any director interested in a transaction so approved) shall individually or collectively consent to such action in writing. Such written consents shall be filed with the minutes of the proceedings of the Board, and shall have the same force and effect as the unanimous vote of such directors.

Section 13. Telephone and Electronic Meetings. Directors may participate in a meeting through use of conference telephone, electronic video screen communication, or other electronic transmission in compliance with Article X, Section 5 of these Bylaws so long as all of the following apply:

(a) each director participating in the meeting can communicate with all of the other directors concurrently; and

(b) each director is provided with the means of participating in all matters before the Board, including the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

Section 14. Standard of Care.

A. General. A director shall perform the duties of a director, including duties as a member of any Board Committee on which the director may serve, in good faith, in a manner such director believes to be in the best interest of this corporation and with such care, including reasonable inquiry, as an ordinarily prudent person in a like situation would use under similar circumstances.

In performing the duties of a director, a director shall be entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, in each case prepared or presented by:

- (i) one or more officers or employees of this corporation whom the director believes to be reliable and competent as to the matters presented;
- (ii) counsel, independent accountants, or other persons as to matters which the director believes to be within such person's professional or expert competence; or
- (iii) a Board Committee upon which the director does not serve, as to matters within its designated authority, provided that the director believes such Committee merits confidence;

so long as in any such case, the director acts in good faith after reasonable inquiry when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

Except as provided in Article VIII below, a person who performs the duties of a director in accordance with this Section shall have no liability based upon any failure or alleged failure to discharge that person's obligations as a director, including, without limiting the generality of the foregoing, any actions or omissions which exceed or defeat a public or charitable purpose to which this corporation, or assets held by it, are dedicated.

B. Investments. Except with respect to assets held for use or used directly in carrying out this corporation's public or charitable activities, in investing, reinvesting, purchasing or acquiring, exchanging, selling, and managing this corporation's investments, the Board shall avoid speculation, looking instead to the permanent disposition of the funds, considering the probable income as well as the probable safety of this corporation's capital. No investment violates this section where it conforms to provisions authorizing such investment contained in an instrument or agreement pursuant to which the assets were contributed to this corporation.

Section 15. Director Inspection Rights. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents, and to inspect the physical properties of this corporation.

Section 16. Compensation of Directors. The Board of Directors may authorize, by resolution, the payment to a director of reasonable compensation for services as a director. The Board may authorize the advance or reimbursement to a director of actual reasonable expenses incurred in carrying out his or her duties as a director, such as for attending meetings of the Board and Board Committees.

Section 17. Executive Compensation Review. The Board of Directors (or a Board Committee) shall review any compensation packages (including all benefits) of the President or the chief executive officer and the Treasurer or chief financial officer, regardless of job title, and such other officers as may be required by law or which shall be so designated by resolution of the Board of Directors from time to time, and shall approve such compensation

only after determining that the compensation is just and reasonable. This review and approval shall occur when such officer is hired, when the term of employment of such officer is renewed or extended, and when the compensation of such officer is modified, unless the modification applies to substantially all of the employees of this corporation.

Section 18. Intellectual Property Documents. Approval of and any amendment to the Initial Specification Patent Non-Assertion Agreement, the Foundation Intellectual Property Rights Policy, or the Foundation Contributor License Agreement (each, an “IPR Document”) shall require the vote of at least five of the directors (if there are more than five directors then in office), the unanimous vote of the Board (if there are five or fewer directors then in office), or the unanimous written consent of the Board; and (b) no amendment to any IPR Document shall apply retroactively to any party, unless such party explicitly agrees to have the amendment apply retroactively. The IPR Documents shall be maintained by and entered into the records of the corporation.

## **ARTICLE VI COMMITTEES**

Section 1. Board Committees. The Board of Directors may create any number of Board Committees, each consisting of two or more directors, and only of directors, to serve at the pleasure of the Board. Appointments to any Board Committee shall be by at least five-sevenths of the directors then in office. Board Committees may be given all the authority of the Board, except for the powers to:

- (a) set the number of directors within a range specified in these Bylaws;
- (b) fill vacancies on the Board of Directors or on any Board Committee;
- (c) fix compensation of directors for serving on the Board or any Board Committee;
- (d) amend or repeal these Bylaws or adopt new Bylaws;
- (e) approve amendments to the Articles of Incorporation of this corporation;
- (f) amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- (g) create any other Board Committees or appoint the members of any Board Committees;
- (h) spend corporate funds to support a nominee for director after there are more nominees than can be elected;
- (i) approve any merger, reorganization, voluntary dissolution, or disposition of substantially all of the assets of this corporation;

- (j) approve or amend any IPR Document;
- (k) set any dues specifically applicable to Designators; or
- (l) take any other action set forth in the Designators Agreement requiring a “supermajority of the Board” (as defined in the Designators Agreement).

Section 2. Advisory Committees. The Board of Directors may establish one or more Advisory Committees to the Board. The members of any Advisory Committee may consist of directors or non directors and may be appointed as the Board determines. Advisory committees may not exercise the authority of the Board to make decisions on behalf of this corporation, but shall be restricted to making recommendations to the Board or Board Committees, and implementing Board or Board Committee decisions and policies under the supervision and control of the Board or Board Committee.

Section 3. Audit Committee. For any tax year in which this corporation has gross revenues of \$2 million or more, this corporation shall have an Audit Committee whose members shall be appointed by the Board of Directors, and who may include both directors and non-directors, subject to the following limitations: (a) members of the Finance Committee, if any, shall constitute less than one-half of the membership of the Audit Committee; (b) the chair of the Audit Committee may not be a member of the Finance Committee, if any; (c) the Audit Committee may not include any member of the staff, including the President or chief executive officer and Treasurer or chief financial officer; (d) the Audit Committee may not include any person who has a material financial interest in any entity doing business with this corporation; and (e) Audit Committee members who are not directors may not receive compensation greater than the compensation paid to directors for their Board service.

If the Audit Committee is composed and appointed as required by Section 1 above (concerning Board Committees), it shall be deemed a Board Committee on which the other directors are entitled to rely as provided in Article V, Section 14 of these Bylaws; otherwise, the Board of Directors shall remain responsible for oversight and supervision of the Audit Committee as an Advisory Committee.

The Audit Committee shall: (1) recommend to the Board of Directors the retention and, when appropriate, the termination of an independent certified public accountant to serve as auditor, (2) negotiate the compensation of the auditor on behalf of the Board, (3) confer with the auditor to satisfy the Audit Committee members that the financial affairs of this corporation are in order, (4) review and determine whether to accept the audit, and (5) approve performance of any non-audit services provided to this corporation by the auditor’s firm.

Section 4. Meetings.

A. Of Board Committees. Meetings and actions of Board Committees shall be governed by and held and taken in accordance with the provisions of Article V of these Bylaws concerning meetings and actions of the Board of Directors, with such changes in the content of those Bylaws as are necessary to substitute the Board Committee and its members for the Board of Directors and its members. Minutes shall be kept of each meeting of any Board Committee and shall be filed with the corporate records.

B. Of Advisory Committees. Subject to the authority of the Board of Directors, Advisory Committees may determine their own meeting rules and whether minutes shall be kept.

The Board of Directors may adopt rules for the governance of any Board or Advisory Committee not inconsistent with the provisions of these Bylaws.

## **ARTICLE VII OFFICERS**

Section 1. Officers. The officers of this corporation shall be a President, a Secretary, and a Treasurer. The corporation may also have, at the discretion of the directors, such other officers as may be appointed by the Board of Directors. Any number of offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President or Chairman of the Board, if any.

Section 2. Election. The officers of this corporation shall be elected annually by the Board of Directors, and each shall serve at the pleasure of the Board, subject to the rights, if any, of an officer under any contract of employment.

Section 3. Removal. Subject to the rights, if any, of an officer under any contract of employment, any officer may be removed, with or without cause, by the Board of Directors or by an officer on whom such power of removal may be conferred by the Board of Directors.

Section 4. Resignation. Any officer may resign at any time by giving written notice to this corporation. Any resignation shall take effect on receipt of that notice by such officer or at any later time specified by that notice and, unless otherwise specified in that notice, the acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of this corporation under any contract to which the officer is a party.

Section 5. Vacancies. A vacancy in any office for any reason shall be filled in the same manner as these Bylaws provide for election to that office.

Section 6. President. The President shall be the chief executive officer of this corporation and shall, subject to control of the Board, generally supervise, direct and control the business and other officers of this corporation. The President shall preside at all meetings of the members and the Board of Directors. The President shall have the general powers and duties of management usually vested in the office of President of the corporation and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 7. Secretary. The Secretary shall supervise the keeping of a full and complete record of the proceedings of the members and the Board of Directors and its committees, if any, shall supervise the giving of such notices as may be proper or necessary, shall supervise the keeping of the minute books and membership records of this corporation, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

Section 8. Treasurer. The Treasurer shall be the chief financial officer of this corporation and shall supervise the charge and custody of all funds of this corporation, the deposit of such funds in the manner prescribed by the Board of Directors, and the keeping and maintaining of adequate and correct accounts of this corporation's properties and business transactions, shall render reports and accountings as required, and shall have such other powers and duties as may be prescribed by the Board or these Bylaws.

## **ARTICLE VIII CERTAIN TRANSACTIONS**

Section 1. Loans. Except as permitted by Section 5236 of the California Nonprofit Public Benefit Corporation Law, this corporation shall not make any loan of money or property to, or guarantee the obligation of, any director or officer; provided, however, that this corporation may advance money to a director or officer of this corporation or any subsidiary for expenses reasonably anticipated to be incurred in performance of the duties of such director or officer so long as such individual would be entitled to be reimbursed for such expenses absent that advance.

Section 2. Self-Dealing Transactions. Except as provided in Section 3 of this Article, the Board of Directors shall not approve, or permit the corporation to engage in, any self dealing transaction. A self-dealing transaction is a transaction to which this corporation is a party and in which one or more of its directors has a material financial interest, unless the transaction comes within Section 5233(b) of the California Nonprofit Public Benefit Corporation Law.

Section 3. Approval. This corporation may engage in a self dealing transaction if the transaction is approved by a court or by the Attorney General. This corporation may also engage in a self-dealing transaction if the Board determines, before the transaction, that: (a) this corporation is entering into the transaction for its own benefit; (b) the transaction is fair and reasonable to this corporation at the time; and (c) after reasonable investigation, the Board determines that it could not have obtained a more advantageous arrangement with reasonable effort under the circumstances. Such determinations must be made by the Board in good faith, with knowledge of the material facts concerning the transaction and the director's interest in the transaction, and by a vote of at least five-sevenths of the directors then in office, without counting the vote of the interested director or directors.

Where it is not reasonably practicable to obtain approval of the Board before entering into a self-dealing transaction, a Board Committee may approve such transaction in a manner consistent with the foregoing requirements, provided that, at its next meeting, the full Board determines in good faith that the Board Committee's approval of the transaction was consistent with such requirements and that it was not reasonably practical to obtain advance approval by the full Board, and ratifies the transaction by at least five-sevenths of the directors then in office without the vote of any interested director.

## **ARTICLE IX INDEMNIFICATION AND INSURANCE**

Section 1. Right of Indemnity. To the fullest extent allowed by Section 5238 of the California Nonprofit Public Benefit Corporation Law, this corporation shall indemnify its directors and officers and may indemnify its other agents, in connection with any proceeding, and in accordance with Section 5238. For purposes of this Article, “agent” shall have the same meaning as in Section 5238(a), including directors, officers, employees, other agents, and persons formerly occupying such positions; “proceeding” shall have the same meaning as in Section 5238(a), including any threatened action or investigation under Section 5233 or brought by the Attorney General; and “expenses” shall have the same meaning as in Section 5238(a), including reasonable attorneys’ fees. The corporation shall be the indemnitor of first resort; its obligations to the indemnitees are primary, and any obligation of any other potential indemnitors to provide indemnification for the same expenses or liabilities incurred by any indemnitee are secondary. This Article shall not be subsequently amended to adversely impact an indemnitee's indemnification coverage in effect at the time such indemnitee accepts his or her position, without the written consent of each such affected indemnitee.

Section 2. Approval of Indemnity. On written request to the Board of Directors in each specific case by any agent seeking indemnification, to the extent that the agent has been successful on the merits, the Board shall promptly authorize indemnification in accordance with Section 5238(d). Otherwise, the Board shall promptly determine, by five-sevenths vote of a quorum consisting of directors who are not parties to the proceeding, whether, in the specific case, the agent has met the applicable standard of conduct stated in Section 5238(b) or Section 5238(c). If so, the Board shall authorize indemnification of such agent, if such agent is a director or officer, and may authorize indemnification of such agent, if the agent is not a director or officer, in each case to the extent permitted thereby. If the Board cannot do so because there is no quorum of directors who are not party to the proceeding for which indemnification is sought, and the agent is a director or office, then the Board shall promptly call a meeting of the members. At that meeting, the members shall determine whether, in the specific case, the applicable standard of conduct stated in such Section has been met. If so, the members shall authorize indemnification of such director or officer, in each case to the extent permitted thereby.

Section 3. Advancing Expenses. The Board of Directors may authorize the advance of expenses incurred by or on behalf of an agent of this corporation in defending any proceeding prior to final disposition, if the Board finds that:

(a) the requested advances are reasonable in amount under the circumstances;  
and

(b) before any advance is made, the agent will submit a written undertaking satisfactory to the Board to repay the advance unless it is ultimately determined that the agent is entitled to indemnification for the expenses under this Article.

The Board shall determine whether the undertaking must be secured, and whether interest shall accrue on the obligation created thereby.

Section 4. Insurance. The Board of Directors may adopt a resolution authorizing the purchase of insurance on behalf of any agent against any liability asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, and such insurance may provide for coverage against liabilities beyond this corporation's power to indemnify the agent under law.

## **ARTICLE X MISCELLANEOUS**

Section 1. Fiscal Year. The fiscal year of this corporation shall end each year on December 31.

Section 2. Contracts, Notes, and Checks. All contracts entered into on behalf of this corporation must be authorized by the person or persons on whom such power may be conferred by the Board from time to time, and, except as otherwise provided by law, every check, draft, promissory note, money order, or other evidence of indebtedness of this corporation shall be signed by the person or persons on whom such power may be conferred by the Board from time to time.

Section 3. Annual Reports to Members and Directors.

A. Financial Report. Unless this corporation receives less than \$25,000 in gross revenues or receipts during the fiscal year, within 120 days after the end of this corporation's fiscal year, the Board shall furnish a written report to all of the directors and members of this corporation containing the following information:

- (i) the assets and liabilities, including the trust funds of this corporation, as of the end of the fiscal year;
- (ii) the principal changes in assets and liabilities, including trust funds, during the fiscal year;
- (iii) the revenue or receipts of this corporation, both unrestricted and restricted for particular purposes, for the fiscal year;
- (iv) the expenses or disbursements of this corporation, for both general and restricted purposes, for the fiscal year; and
- (v) any information required by subsection B below.

The foregoing report shall be accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of this corporation that such statements were prepared without an audit from the books and records of this corporation. The report and any accompanying material may be sent by electronic transmission in compliance with Article X, Section 5 of these Bylaws.

If this corporation receives less than \$25,000 in gross revenues or receipts during the fiscal year, the report described above must be furnished only to the directors and any member who requests it in writing.

B. Report of Certain Transactions. Unless this corporation furnishes the report required by subsection A above, within 120 days after the end of this corporation's fiscal year, the Board shall furnish a written report to all of the members and directors of this corporation containing the following:

(i) a description of any transaction during the previous fiscal year involving \$50,000 or more between this corporation (or its parent or subsidiary, if any) and any of its directors or officers (or those of its parent or subsidiary, if any) or any holder of more than ten percent of the voting power of this corporation (or its parent or subsidiary, if any), including the names of the interested persons, their relationship to this corporation, the nature of their interest in the transaction and, where practicable, the value of such interest; and

(ii) the amount and circumstances of any indemnifications or advances aggregating more than \$10,000 that were paid during the fiscal year to any director or officer of this corporation, and that were not approved by the members of this corporation.

If no transaction required to be reported has occurred during the fiscal year, no report is required for that fiscal year.

Section 4. Required Financial Audits. This corporation shall obtain a financial audit for any tax year in which it receives or accrues gross revenue of \$2 million or more, excluding grant or contract income from any governmental entity for which the governmental entity requires an accounting. Whether or not they are required by law, any audited financial statements obtained by this corporation shall be made available for inspection by the Attorney General and the general public within nine months after the close of the fiscal year to which the statements relate, and shall remain available for three years (1) by making them available at this corporation's principal, regional, and district offices during regular business hours and (2) either by mailing a copy to any person who so requests in person or in writing or by posting them on this corporation's website.

Section 5. Electronic Transmissions. Unless otherwise provided in these Bylaws, and subject to any guidelines and procedures that the Board of Directors may adopt from time to time, the terms "written" and "in writing" as used in these Bylaws include any form of recorded message in the English language capable of comprehension by ordinary visual means, and may include electronic transmissions, such as facsimile or email, provided (i) for electronic transmissions from the corporation, the corporation has obtained an unrevoked written consent from the recipient to the use of such means of communication; (ii) for electronic transmissions to the corporation, the corporation has in effect reasonable measures to verify that the sender is the individual purporting to have sent such transmission; and (iii) the transmission creates a record that can be retained, retrieved, reviewed, and rendered into clearly legible tangible form.

Section 6. Electronic Transmissions to Members. An electronic transmission by the corporation to a member is valid only if the following requirements have been satisfied:

(i) The member has affirmatively consented (and has not withdrawn consent) to the use of electronic transmissions;

(ii) Prior to consenting, the member was provided with a clear and conspicuous statement informing him or her of:

(a) any right or option to have the transmissions provided in non-electronic form;

(b) the right to withdraw consent to the use of electronic transmissions and any conditions or consequences of such withdrawal;

(c) the procedure for withdrawing consent and for updating information needed to contact the member electronically; and

(d) the procedure for obtaining a paper copy of an electronic transmission upon request and whether any fee will be charged for such copy.

(iii) Prior to consenting, the member was provided with a statement of the hardware and software requirements for access to and retention of the electronic transmissions, and consented electronically in a manner that reasonably demonstrates that he or she can access information in the electronic form that will be used.

If a change in the hardware or software requirements creates a material risk that the member will not be able to access or retain the electronic transmissions, this corporation shall provide a statement of the revised hardware and software requirements necessary, as well as the member's right to withdraw consent without the imposition of any fees for such withdrawal.

Section 7. Amendments. Amendments to these Bylaws may be adopted by the Board of Directors or the members, as follows. Such amendments shall require the vote of at least five of the directors (if there are more than five directors then in office), the unanimous vote of the Board (if there are five or fewer directors then in office), or the unanimous written consent of the Board, as the case may be; provided that the Board may not amend the Bylaws if the amendment would materially and adversely affect the rights of members to vote, or to transfer their memberships. If a proposed Bylaw amendment will be considered at a meeting, it shall be submitted in writing to the persons entitled to vote thereon at least one week before such meeting. In addition, the members may amend the Bylaws by a vote of the majority of the members voting at a meeting at which a quorum is present, or by written ballot; provided that any such amendment shall be conditioned upon and subject to obtaining the approval of at least three Designators to such amendment.

Section 8. Governing Law. In all matters not specified in these Bylaws, or in the event these Bylaws shall not comply with applicable law, the California Nonprofit Public Benefit Corporation Law as then in effect shall apply.