



STANDARD PERFORMANCE EVALUATION CORPORATION

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ARTICLE I CORPORATION

Section 1.1. Corporate Name. The name of the corporation shall be Standard Performance Evaluation Corporation (SPEC), a California nonprofit mutual benefit corporation.

Section 1.2. Corporate Purposes and Code of Conduct. The specific purpose and code of conduct of this corporation and all of its agents and committees is to establish, maintain and endorse a set of objective standard performance benchmarks for the measurement and characterization of high performance computers, including RISC-based designs, representing an applications-oriented approach to measuring advanced system performance and facilitating the collection of consistent and meaningful data for evaluation in real-world environments, and to be readily available to manufacturers and users of all such high performance systems, whether or not members or participants in the corporation, and in furtherance thereof:

A. To provide the benchmarks through public domains to all industry participants, including labs, universities and consultants, at a nominal cost, primarily to cover materials and handling;

B. To solicit contributions to the development of the benchmarks from all industry participants, independent testing labs, universities and consultants;

C. To establish guidelines for the execution of the benchmark programs, including clear definition of exact system configurations, and have the test results reported publicly;

D. To encourage the entry of additional industry innovators by making objective the performance claims of all industry participants;

E. To deal openly and professionally with any conflicts of interest which may appear among SPEC participants;

F. To prohibit any discussions or decisions related to participants' separate products, prices, production volumes, areas and methods of distribution, and/or markets;

G. To maintain meetings open to all interested industry participants, save only those meetings which may deal specifically with personnel or litigation matters affecting SPEC and those designated by the Board from which media representatives may be excluded;

H. To maintain the freedom of each participant to employ additional or alternate standards and courses of action on its own in addition to any standards developed by SPEC;

I. To operate at all times within applicable national and international anti-trust rules.

Section 1.3 Corporate Offices. The principal office for the transaction of the business of the corporation (the "Principal Executive office") is fixed and located in Fauquier County, Virginia. The Board of Directors is granted full power and authority to change the Principal Executive Office from one location to another. Any change of this location shall be noted by the Secretary on these Bylaws opposite this Section or this Section may be amended to state the new location. The Board of Directors may at any time establish branch or subordinate offices at any place or places where the corporation is qualified to do business.





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ARTICLE II MEMBERS AND MEETINGS OF MEMBERS

Section 2.1. Membership and Voting Rights. The corporation shall have one class of members, each of which shall designate in writing its Group Affiliation under Section 2.14 and its official representative to each such Group upon becoming a member. Each member shall have one (1) vote at each meeting of members as described in Sections 2.6 and 2.7 hereof for each Group of which it is a dues paying member as defined in Section 2.14.

Section 2.1. Affiliate Membership and Voting Rights. An Affiliate of a Member shall be free to join the Corporation as a Member. However, a Member and its Affiliate(s) (including Affiliate(s) of an Affiliate) shall be deemed a single Member for purposes of (1) any vote of the Members of a designated Group, Committee, Work Group, or any other sub-group of the Corporation where they otherwise participate as peers; and (2) having a seat on the Board of Directors.

“Affiliate” means any legal entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of voting power or equity in another entity ("Control"), or is Controlled by another entity or is under common Control with another entity, so long as such Control exists. Note: The term affiliate is only used when the specific entities (members or prospective members) under discussion have such a relationship between them as described in this definition.

When a Member and its Affiliate(s) would have or appear to have two or more votes on a matter within a Group, Committee, Work Group, or other sub-group if they were not affiliates, the Member and its Affiliate(s) shall designate a single voting representative in a written notice to the Board of Directors and to the relevant group or committee Chairperson. The designated voting representative shall be responsible for resolving any disagreements among the Member and its Affiliate(s) and submitting a single vote on behalf of the Member and its Affiliate(s).

Section 2.2. Eligibility for Membership. A member shall be a manufacturer of general purpose computing systems based on its own computer architecture, or a manufacturer or marketer of computer systems, or a marketer of software for computer systems, or a user of such systems.

Section 2.3. Termination of Membership. The Board of Directors by affirmative vote of two-thirds (2/3) of all Directors may suspend or expel a member for failure to continue to meet eligibility requirements or for delinquency in dues. The member shall be given fifteen (15) days' prior notice of the expulsion or suspension and the reasons therefor. The member shall have the right to be heard on a submission in writing not less than five (5) days before the effective date of the expulsion or suspension, by the Board of Directors.

Section 2.4. Resignation. Any member may resign by filing a written resignation with the Secretary, which resignation shall take effect on the date of receipt.

Section 2.5. Initiation Fees; Dues. Membership initiation fees and dues shall be payable in such amounts and at such times as determined from time to time by the Board of Directors.

Section 2.6. Annual Meetings. An annual meeting of the members shall be held in each calendar year at a time and place set by the Board of Directors, for the purposes of electing Directors, receiving an annual report, and for the transaction of such other business as may come before the meeting.

Section 2.7. Special Meetings. Special meetings may be called by the President, the Board of Directors, or not less than two-thirds (2/3) of the members.





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Section 2.8. Place of Meeting. Meetings of the members shall be held at such place or places as may from time to time be fixed by the Board of Directors.

Section 2.9. Notice of Meeting. Written notice of each meeting of members stating the place, day and hour of the meeting, and in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered either personally or by first-class mail or by electronic means to each member, not less than ten (10) and not more than ninety (90) days before the date of such meeting. The default delivery method of such notice shall be by electronic means, but each member shall have the right to elect to not receive notice by electronic means, in which case notice shall be delivered by either of the other methods described above as selected by the Board of Directors.

Section 2.10. Quorum and Transacting Business. Members representing one-third (1/3) of member votes as specified in Section 2.1, above, present in person or by proxy at any meeting, shall constitute a quorum at all meetings. A majority of member votes present, in person or represented by proxy, shall decide any question brought before such meeting, unless a greater proportion is required by law or by the Articles of Incorporation or by these Bylaws. If a quorum is not present at any meeting of members, a majority of member votes present may adjourn the meeting from time to time without further notice.

Section 2.11. Proxies. Every person entitled to vote shall have the right to do so either in person or by written proxy executed in accordance with then applicable law.

Section 2.12. Action without Meeting by Written Ballot.

A. Any action which may be taken at any meeting of members may be taken without a meeting provided there is satisfaction of the following ballot requirements:

- (1) The corporation distributes a written ballot to every member entitled to vote on the matter;
- (2) The ballot sets forth the proposed action, provides an opportunity to specify approval or disapproval of any proposal, and provides a reasonable time within which to return the ballot to the corporation;
- (3) The number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action; and
- (4) The number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

B. Ballots shall be solicited in a manner consistent with the requirements of giving notice of members' meetings set forth in Section 2.9 of these Bylaws and of voting by written ballot set forth in Subsection 2.12.C of these Bylaws. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and shall state the percentage of approvals necessary to pass the measure submitted. The solicitation shall specify the time by which the ballot must be received in order to be counted.

C. The form of written ballot distributed to ten (10) or more members shall afford an opportunity on the form of written ballot to specify a choice between approval and disapproval of each matter or group of related matters intended, at the time the written ballot is distributed, to be acted on by such written ballot. The form shall also provide, subject to reasonable specified conditions, that where the person solicited specifies a choice with respect to any such matter, the vote must be cast in accordance therewith. In any election of Directors, any form of written ballot in which the Directors to be voted on are named therein as candidates and which is marked by a member "withheld" or otherwise marked in a manner indicating that the authority to vote for the election of Directors is withheld shall not be voted either for or against the election of a Director.

D. A written ballot may not be revoked.





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Section 2.13. Conduct of Meetings and Elections.

A. The President of the corporation or, in his or her absence, any other person chosen by a majority of the members present in person or by proxy shall be Chairman of and shall preside over the meetings of the members.

B. The Secretary of the corporation shall act as the secretary of all meetings of members; provided that in his or her absence, the Chairman of the meetings of members shall appoint another person to act as Secretary of the meetings.

C. The Robert's Rules of Order, as may be amended from time to time, shall govern the meetings of members insofar as such rules are not inconsistent with, or in conflict with these Bylaws or the Articles of Incorporation of this corporation.

D. In advance of any meeting of members, the board may appoint any persons, other than candidates for office, as Inspectors of Election to act at the meeting and any adjournment thereof. If the Inspectors of Election are not so appointed, or if any persons so appointed fail to appear or refuse to act, the Chairman of any meeting may, and on request of any member or member's proxy must, appoint Inspectors of Election at the meeting. The number of inspectors shall be either one (1) or three (3). If appointed at a meeting on the request of one (1) or more members or proxies, the majority of members represented in person or by proxy shall determine whether one (1) or three (3) inspectors are to be appointed.

E. The Inspectors of Election shall perform the following duties:

- Determine the number of memberships outstanding, the number represented at the meeting, the existence of a quorum, and the authenticity, validity, and effect of proxies;
- Receive votes, ballots, or consents;
- Hear and determine all challenges and questions in any way arising in connection with the right to vote;
- Count and tabulate all votes and consents;
- Determine when the polls shall close;
- Determine the result and do such acts as may be proper to conduct the election or vote with fairness to all members.

The inspectors shall perform their duties impartially, in good faith, to the best of their ability, and as expeditiously as is practical.

F. If there are three (3) Inspectors of Election, the decision, act, or certificate of a majority is effective in all respects as the decision, act, or certificate of all.

G. On request of the Chairman or any member or member's proxy, the Inspectors of Election shall make a report in writing concerning the performance of their duties and execute a certificate of any fact found by them. Any report or certificate made by the inspectors shall be prima facie evidence of the facts stated therein.

Section 2.14 Groups of Members. The Board of Directors may charter one (1) or more organizational Groups within the Corporation. Eligibility for memberships in the Groups and dues payable therefore shall be determined by the Board. Each member of a Group shall have one (1) vote as to each matter to be acted upon by the Group, except as provided in Section 2.1 of these Bylaws. Each Group shall define its own voting rules, member rights and privileges and products consistent with the corporation's Articles of Incorporation and these Bylaws as they may be amended from time to time and shall be responsible for its own budget and accounting.





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ARTICLE III BOARD OF DIRECTORS

Section 3.1. Powers. The Board of Directors shall manage the affairs of the corporation, exercise its powers, and control its property. It shall determine compliance with the corporation's stated purposes and shall have the power and authority to do and perform all acts or functions not inconsistent with these Bylaws or the corporation's Articles of Incorporation.

Section 3.2. Directors. The Board of Directors shall consist of not fewer than five (5) and not more than nine (9) regular voting Directors, with the exact number of Directors between such limits to be fixed by approval by the Board of Directors. The exact number of Directors shall be eight (8), of which four (4) shall be Class A and four (4) Class B Directors, as designated by the Board. Thereafter, any additional Directorships created by the Board shall be alternately designated Class A and Class B, as created. No member company shall be represented by more than one (1) director on the Board of Directors.

Section 3.3. Terms of Office. Each Class A Director shall hold office until each annual meeting of members held in an even-numbered year, and each Class B Director shall hold office until the next annual meeting of members held in an odd-numbered year, as prescribed by Section 2.6 of these Bylaws and until the Director's successor is elected and qualifies. In the event a Director is removed at a special meeting of the members called and held as prescribed by these Bylaws, the Director shall hold office until his or her removal and his or her successor is elected and qualifies and no longer.

Section 3.4. Nomination. Any person qualified to be a Director under these Bylaws may be nominated by the method of nomination authorized by the Board or by any other method authorized by law.

Section 3.5. Election. Directors shall be elected at each annual meeting as prescribed by Sections 2.6 and 3.2 of these Bylaws or by written ballot as authorized by Section 2.12 of these Bylaws. The candidates receiving the highest number of votes up to the number of Directors to be elected are elected.

In the event there are more candidates than Directors positions to be filled and there is a tie vote for some candidates, the candidates getting more votes than the tie vote count are elected. Those members present shall vote again on the remaining candidates, and the candidates receiving the highest number of votes up to the remaining number of Directors to be elected are elected. Directors shall be eligible for reelection without limitation on the number of terms they may serve, provided they continue to meet the qualifications required by these Bylaws.

Section 3.6. Compensation. The Directors shall serve without compensation except that they may be allowed and paid their actual and necessary expenses incurred in attending meetings of the Board.

Section 3.7. Meetings.

A. Meetings of the Board may be called by the Chairman of the Board or the President or any Vice President or the Secretary or any two (2) Directors.

B. All meetings of the Board shall be held at the principal office of the corporation as specified in Section 1.3 of these Bylaws, except as the Board may determine.

C. Regular meetings of the Board shall be held, without call or notice at the venue of the annual meeting as fixed by the Board of Directors of the corporation, immediately following each annual meeting of the members of the Corporation as set forth in Section 2.6 of these Bylaws.





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D. Special meetings of the Board may be called by the Chairman of the Board or the President or any Vice President or the Secretary or any two (2) Directors. Special meetings shall be held on four (4) days' notice by first class mail, postage prepaid, or on forty-eight (48) hours' notice delivered personally or by telephone, facsimile transmission or electronic means. Notice of the special meeting need not be given to any Director who signs a waiver of notice or a written 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 such notice to such Director. All such waivers, consents, and approval shall be filed with the corporate records or made a part of the minutes of the meetings.

E. A majority of the authorized number of Directors constitutes a quorum of the board for the transaction of business, except as hereinafter provided.

F. Except as otherwise provided in the Articles, in these Bylaws, or by law, every act or decision done or made by a majority of the Directors present at a meeting duly held at which a quorum is present is the act of the Board; provided, however, that any meeting at which a quorum was initially present may continue to transact business notwithstanding the withdrawal of Directors if any action taken is approved by at least a majority of the required quorum for such meeting.

G. The Chairman of the Board or, in his or her absence, any Director selected by the Directors may preside at meetings of the Board of Directors. The Secretary of the corporation or, in the Secretary's absence, any person appointed by the presiding officer shall act as Board Secretary. The members of the Board may participate in use of conference telephone or similar communications equipment, so long as all members participating in such meeting can hear one another. Such participation shall constitute personal presence at the meeting.

H. A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than twenty-four (24) hours, notice of the adjournment to another time or place must be given prior to the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

Section 3.8. Action Without Meeting. Any action required or permitted to be taken by the Board may be taken without a meeting, if all members of the Board individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the Board. Such action by written consent shall have the same force and effect as the unanimous vote of such Directors.

Section 3.9. Removal of Directors.

A. The Board may declare vacant the office of a Director on the occurrence of any of the following events:

- (1) The Director has been declared of unsound mind by a final order of court;
- (2) The Director has been convicted of a felony; or
- (3) The Director has been found by a final order or judgment of any court to have breached duties imposed by Section 7238 of the Corporations Code on directors who perform functions with respect to assets held in charitable trust.

B. Any or all of the Directors may be removed without cause if, where the corporation has fewer than fifty (50) members, such removal shall be approved by a majority of all members pursuant to Section 5033 of the Corporations Code; or where the corporation has more than fifty (50) members, such removal shall be approved by the members within the meaning of Section 5034 of the Corporations Code.

Section 3.10. Resignation of Director. Any Director may resign effective on giving written notice to the Chairman of the Board of Directors, the President, the Secretary, or the Board of Directors of the corporation, unless the notice specifies a later time for the effectiveness of such resignation. If the resignation is effective at a future time, a successor may be elected to take office when the resignation becomes effective.





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Section 3.11. Vacancies in the Board.

A. Vacancies on the Board of Directors shall exist on the death, resignation, or removal of any Director; whenever the number of Directors authorized is increased; and on the failure of the members in any election to elect the full number of Directors authorized.

B. Except as otherwise provided in the Articles or these Bylaws and except for a vacancy created by the removal of a Director pursuant to Section 3.9 of these Bylaws, vacancies on the Board of Directors may be filled by approval of the Board of Directors, or, if the number of Directors then in office is less than a quorum, by:

- (1) the unanimous written consent of the directors then in office;
- (2) the affirmative vote of a majority of the Directors then in office at a meeting held pursuant to notice or waivers of notice as provided in Subsection 3.7.D of these Bylaws; or
- (3) a sole remaining Director.

C. Vacancies created by removal of Directors shall be filled only by the approval of the members within the meaning of Section 5034 of the Corporations Code. The members may elect a Director at any time to fill any vacancy not filled by the Directors.

ARTICLE IV OFFICERS OF THE CORPORATION

Section 4.1. Designation of Corporate officers. The officers of the corporation shall be a President, zero or more Vice Presidents as may be determined by the Board, a Secretary, a Treasurer and such other Assistant Secretaries and/or Assistant Treasurers as may be deemed necessary. Officers shall be nominated and elected by the Board of Directors at the Board's annual meeting and shall hold office for one (1) year or until their successors shall have been duly elected and qualified.

Section 4.2. Duties of the President. The President shall be the Chief Executive Officer of the corporation, shall be the direct executive representative of the Board of Directors in management of the corporation, and shall have all the duties and authority which such position would customarily require, including, but not limited to, the following:

- A. Carrying out all policies established by the Board and advising on the formulation of these policies.
- B. Developing and submitting to the Board for approval a plan of organization for the conduct of the various activities of the corporation and recommending changes when necessary.
- C. Preparing written plans for the achievement of the corporation's specific objectives and periodically reviewing and evaluating such plans.
- D. Preparing an annual budget showing the expected revenue and expenditures as required by the Board.
- E. Selecting, employing, supervising, and discharging corporate agents and employees and developing and maintaining personnel policies and practices for the corporation.
- F. Maintaining physical properties in a good and safe state of repair and operating condition.
- G. Supervising the financial affairs to ensure that funds are collected and expended to the best possible advantage of the corporation.
- H. Presenting to the Board, or its authorized committees, periodic reports reflecting the activities of the corporation and such other special reports as may be required by the Board.
- I. Attending meetings of the Board, serving as a member on its committees, and coordinating the preparation of Board meeting materials.
- J. Representing the corporation in its relationships with its affiliated organizations.
- K. Performing such other duties as may from time to time be assigned by the Board Chairperson or by the Board.





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Section 4.3. Duties of the Vice President. In the absence of the President or in the event of his inability or refusal to act, the Vice President shall chair meetings of the Board of Directors and shall perform such other duties as may be delegated to him from time to time by the President.

Section 4.4. Duties of the Treasurer. The Treasurer shall have custody and control of all funds of the corporation and shall have such duties as are customarily performed by or required of corporate treasurers, including giving a bond when requested by the Board of Directors. The Treasurer shall ensure that a true and accurate accounting of the financial transactions of the corporation is made periodically, the reports of such transactions are presented to the Board of Directors, and that all accounts payable are presented to such representatives as the Board may designate for authorization of payment.

Section 4.5. Duties of the Secretary. The Secretary shall act as Secretary of the corporation and the Board of Directors, shall send appropriate notices or waivers of notice regarding Board meetings, shall act as official custodian of all records, reports and minutes of the corporation, the Board of Directors and committees, shall be responsible for the keeping and reporting of adequate records of all meetings of the Board of Directors, and shall perform such other duties as are customarily performed by or required of corporate secretaries.

Section 4.6. Duties of the Assistant Treasurers and Assistant Secretaries. The Assistant Treasurers and Assistant Secretaries shall perform such duties as shall be assigned to them by the Treasurer or Secretary, respectively, or by the President or the Board of Directors. If required by the Board of Directors, the Assistant Treasurers shall give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine.





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ARTICLE V COMMITTEES OF THE BOARD OF DIRECTORS

Section 5.1. Special Committees. Special Committees may be created by resolution of the Board of Directors. Chairpersons and committee members shall be appointed by the Board. A special committee shall limit its activities to the accomplishment of the tasks for which it is appointed and shall have no power to act except as specifically conferred by action of the Board. Upon completion of the tasks for which created, a special committee shall be discharged.

Section 5.2. Committee Procedures. Each committee shall record minutes of its deliberations, recommendations and conclusions and shall promptly deliver a copy of such minutes to the Secretary of the corporation. Notice of the meetings of any committee shall be given as set forth in Section 2.9 to the members thereof, and to the Chairperson, the Vice Chairperson, if any, and the President, each of whom shall have the right to attend and participate in the deliberations of the committee. The President or the committee Chairperson may invite to any committee meeting such individuals as they may select who may be helpful to the deliberations of the committee. A majority of the members of each committee shall constitute a quorum for the transaction of business and the act of a majority of the members of any committee present at a meeting at which a quorum is present shall be the action of the committee.

Section 5.3. Limitations on Committees. No committee, regardless of Board resolution, may:

- A. Fill vacancies on the Board of Directors or in any committee;
- B. Fix compensation of the Directors for serving on the Board or on any committee;
- C. Amend or repeal Bylaws or adopt new Bylaws;
- D. Amend or repeal any resolution of the Board of Directors which by its express terms is not so amendable or repealable;
- E. Appoint any other committees of the Board of Directors or the members of these committees;
- F. Approve any transaction
 - 1) to which the corporation is a party or one (1) or more Directors have a material financial interest; or
 - 2) between the corporation or one (1) or more of its Directors or between the corporation or any person in which one or more of its Directors have a material financial interest.
- G. Approve expenditure of corporate funds to support a nominee for Director after there are more people nominated for Director than can be elected.

ARTICLE VI INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES AND OTHER AGENTS

Section 6.1. Definitions. For the purposes of this Article;

A. "Agent" means any person who is or was a Director, officer, employee, or other agent of this corporation, or is or was serving at the request of this corporation as a Director, officer, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, or other enterprise, or was a Director, officer, employee, or agent of a foreign or domestic corporation that was a predecessor corporation of this corporation or of another enterprise at the request of the predecessor corporation;

B. "Proceeding" means any threatened, pending, or completed action or proceeding, whether civil, criminal, administrative or investigative; and





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C. "Expenses" includes, without limitation, all attorneys' fees, costs, and any other expenses incurred in the defense of any claims or proceedings against an agent by reason of his or her position or relationship as agent and all attorneys' fees, costs, and other expenses incurred in establishing a right to indemnification under this Article.

Section 6.2. Successful Defense by Agent. To the extent that an Agent of this corporation has been successful on the merits in the defense of any Proceeding, or in the defense of any claim, issue, or matter therein, the Agent shall be indemnified against Expenses actually and reasonably incurred by the Agent in connection with the claim. If an Agent either settles any such claim or sustains a judgment rendered against him or her, then the provisions of Sections 6.3 through 6.5 shall determine whether the Agent is entitled to indemnification.

Section 6.3. Actions Brought by Persons Other Than the Corporation. Subject to the required findings to be made pursuant to Section 6.5 below, this corporation shall indemnify any person who was or is a party, or is threatened to be made a party, to any Proceeding other than an action brought by, or on behalf of, this corporation, or by an officer, Director or person granted related status by the Attorney General on the ground that the defendant Director was or is engaging in self-dealing within the meaning of California Corporations Code section 5233, or by the Attorney General, or a person granted related status by the Attorney General, for any breach of duty relating to assets held in charitable trust, by reason of the fact that such person is or was an Agent of this corporation, for all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred in connection with the Proceeding.

Section 6.4. Action Brought By or On Behalf of the Corporation.

A. Claims Settled out of Court. If any Agent settles or otherwise disposes of a threatened or pending action brought by or on behalf of this corporation, with or without court approval, the Agent shall receive no indemnification for either amounts paid pursuant to the terms of the settlement or other disposition or for any expenses incurred in defending against the Proceeding.

B. Claims and Suits Awarded Against Agent. This corporation 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 brought by or on behalf of this corporation by reason of the fact that the person is or was an Agent of this corporation, for all Expenses actually and reasonably incurred in connection with the defense of that action, provided that both the following are met:

(1) The determination of good faith conduct, required by Section 6.5 below, must be made in the manner provided for in that Section; and

(2) Upon application, the court in which the action was brought must determine that, in view of all the circumstances of the case, the Agent should be entitled to indemnity for the Expenses incurred. If the Agent is found to be so entitled, the court shall determine the appropriate amount of Expenses to be reimbursed.

Section 6.5. Determination of Agent's Good Faith Conduct. The indemnification granted to an Agent in Sections 6.3 and 6.4 above is conditions on the following:

A. Required Standard of Conduct. The Agent seeking reimbursement must be found, in the manner provided below, that he or she acted in good faith, in a manner he or she believed to be in the best interest of this corporation, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use in similar circumstances. The termination of any proceeding by judgment, order, settlement, conviction, or on a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith or in a manner which he or she reasonably believed to be in the best interest of this corporation or that he or she had reasonable cause to believe that his or her conduct was unlawful. In the case of a criminal proceeding, the person must have had no reasonable cause to believe that his or her conduct was unlawful.





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B. Manner of Determination of Good Faith Conduct. The determination that the Agent did act in a manner complying with Subsection 6.5.A above shall be made by:

- (1) The Board of Directors by a majority vote of a quorum consisting of Directors who are not parties to the Proceeding; or
- (2) The court in which the Proceeding is or was pending. Such determination may be made on application brought by this corporation or the Agent or the attorney or other person rendering a defense to the Agent, whether or not the application by the Agent, attorney, or other person is opposed by this corporation.

Section 6.6. Limitations. No indemnification or advance shall be made under this Article, except as provided in Section 6.5 or Subsection 6.5. B (2), in any circumstances when it appears:

A. That the indemnification or advance would be inconsistent with a provision of the Articles of Incorporation, or an agreement in effect at the time of the accrual of the alleged cause of action asserted in the Proceeding in which the Expenses were incurred or other amounts were paid, which prohibits or otherwise limits indemnification; or

B. That the indemnification would be inconsistent with any condition expressly imposed by a court in approving settlement.

Section 6.7. Advance of Expenses. Expenses incurred in defending any Proceeding may be advanced by this corporation before the final disposition of the Proceeding on receipt of an undertaking by or on behalf of the Agent to repay the amount of the advance unless it is determined ultimately that the Agent is entitled to be indemnified as authorized in this Article.

Section 6.8. Contractual Rights of Non-directors and Non-officers. Nothing contained in this Article shall affect any right to indemnification to which persons other than Directors and officers of this corporation, or any subsidiary hereof, may be entitled by contract or otherwise.

Section 6.9. Insurance. The Board of Directors may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any Agent of the corporation against any liability asserted against or incurred by the Agent in such capacity or arising out of the Agent's status as such, whether or not this corporation would have the power to indemnify the Agent against the liability under the provisions of this Article.

Section 6.10. Fiduciaries or Corporate Employee Benefit Plan. This Article does not apply to any Proceeding against any trustee, investment manager, or other fiduciary of an employee benefit plan in that person's capacity as such, even though that person may also be an Agent of this corporation. Nothing contained in this Article shall limit any right to indemnification to which such a trustee, investment manager, or other fiduciary may be entitled by contract or otherwise, which shall be enforceable to the extent permitted by applicable law.

ARTICLE VII RECORDS AND REPORTS

Section 7.1. Maintenance and Inspection of Articles of Incorporation and Bylaws. The corporation shall keep at its Principal Executive Office the original or a copy of the Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the public at all reasonable times during office hours.

Section 7.2. Maintenance and Inspection of Other Corporate Records. The accounting books, records, and minutes of proceedings of the Board of Directors and any committee(s) of the Board of Directors shall be kept at such place or places designated by the Board of Directors, or, in the absence of such designation, at the Principal Executive Office of the corporation. The minutes shall be kept in written or typed form, and the accounting books and records shall be kept either in written or typed form or in any other form capable of being converted into written, typed, or printed form.





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Section 7.3. Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of every kind and the physical properties of the corporation and each of its subsidiary corporations. This inspection by a Director may be made in person or by an agent or attorney, and the right of inspection includes the right to copy and make extracts of documents.

Section 7.4. Annual Report. The annual report to members referred to in the California Nonprofit Corporation Law is expressly dispensed with, but nothing in these Bylaws shall be interpreted as prohibiting the Board of Directors from issuing annual or other periodic reports as they consider appropriate. However, the corporation shall provide to the Directors, within one hundred twenty (120) days of the close of its fiscal year, a report containing the following information in detail:

- A. The assets and liabilities, including the trust funds of the corporation as of the end of the fiscal year;
- B. The principal changes in assets and liabilities, including trust funds, during the fiscal year;
- C. The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year;
- D. The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year; and
- E. Any information required by California Corporations Code section 8322.

ARTICLE VIII CONSTRUCTION AND DEFINITIONS

Section 8.1. Construction. Unless the context requires otherwise, the general provisions, rules of construction and definitions in the California Nonprofit Corporation Law shall govern the construction of these Bylaws. Without limiting the generality of the above, the-masculine gender includes the feminine and neuter, the singular number includes the plural, the plural number includes the singular, and the term "person" includes both the corporation and a natural person.

ARTICLE IX AMENDMENTS

Section 9.1. Amendment by Directors. These Bylaws may be amended or repealed by approval of three-fourths (3/4) of the members of the Board of Directors present at a Board meeting.

ARTICLE X GIFTS TO THE CORPORATION

Section 10.1. Receipt of Gifts. Donors may make gifts to the corporation by naming or otherwise identifying the corporation, whether or not a trustee, custodian, or agent is designated to receive the property contributed. Gifts shall vest in the corporation upon receipt and acceptance by it (whether signified by a corporate officer, employee, or agent).

ARTICLE XI CONFLICTS OF INTEREST

Section 11.1. Statement of General Policy. These Bylaws recognize that both real and apparent conflicts of interest or dualities of interest (hereinafter referred to as "conflicts") sometimes occur in the course of conducting the corporation's daily affairs. A conflict as used in these Bylaws refers only to personal, proprietary interests of the persons covered by this policy and their immediate families and not to philosophical or professional differences of opinion. Conflicts occur because the many persons associated with the corporation should be expected to have and do in fact generally have multiple interests and affiliations and various positions of responsibility within the community. Sometimes a person will owe identical duties to two or more organizations conducting similar activities.





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Conflicts are undesirable because they potentially or apparently place the interests of others ahead of the corporation's obligations to its corporate purposes and to the public interest. Conflicts are also undesirable because they often reflect adversely upon the person involved and upon the institutions with which they are affiliated, regardless of the actual facts or motivations of the parties. However, the long range best interests of the corporation do not require the termination of all association with persons who may have real or apparent conflicts if a prescribed and effective method can render such conflicts harmless to all concerned.

Therefore, the corporation's affirmative policy shall be to require that all actual or apparent conflicts be disclosed promptly and fully to all necessary parties and to prohibit specified involvement in the affairs of the corporation by persons having such conflicts.

Section 11.2. Coverage of this Policy. This policy shall apply to all members of the Board of Directors and corporate officers, agents, and employees of the corporation, including independent contractor providers of services and materials. The corporation's management shall have the affirmative obligation to publicize periodically this policy to all such parties.

Section 11.3. Disclosure of all Conflicts. All persons to whom this policy applies shall disclose all real and apparent conflicts which they discover or have been brought to their attention in connection with the corporation's activities. "Disclosure," as used in these Bylaws shall mean providing promptly to the appropriate persons a written description of the facts comprising the real or apparent conflict. An annual disclosure statement may be circulated to all persons to whom this policy applies to assist them in considering such disclosures, but disclosure is appropriate whenever conflicts arise. Written disclosure notices of conflicts shall be filed with the President or any other person designated by him or her from time to time to receive such notifications. All disclosure notices received hereunder shall be noted for record in the minutes of a meeting of the Board of Directors.

Section 11.4. Proscribed Activity by Persons Having Conflicts. When an individual Director, officer, agent or employee believes that he or a member of his immediate family might have or does have a real or apparent conflict, he or she should, in addition to filing the disclosure notice required under Section 11.3, abstain from making motions, voting, executing agreements, or taking any other similar direct action on behalf of the corporation where the conflict might pertain, but shall not be precluded from debate or other similar involvement on behalf of the corporation. When any person requests in writing, or upon its own initiative, the Board at any time may establish further guidelines consistent with the interests of the corporation for the resolution of any real or apparent conflicts.

