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## Bylaws

Amended and Restated Bylaws

of

THE LINUX FOUNDATION

(an Oregon nonprofit mutual benefit corporation)

Effective as of January 15, 2016

### ARTICLE I Offices

**Section 1.1 Principal Office.** The principal office for the transaction of the business of this corporation shall be located in the State of Oregon. The Board of Directors is hereby granted full power and authority to change the principal office from one location to another.

**Section 1.2 Other Offices.** Branch or subordinate offices may at any time be established by the Board of Directors at any place or places where this corporation is qualified to do business.

### ARTICLE II Purposes

**Section 2.1 Purposes.** This corporation is a nonprofit mutual benefit corporation, organized and operated to engage in any lawful activity permitted by Section 501(c)(6) of the Internal Revenue Code of 1986, as amended. The purposes of this corporation include promoting, protecting, and standardizing Linux and open source software.

### ARTICLE III Membership

**Section 3.1 Classes of Membership.** There shall be three classes of membership in this corporation: (i) Platinum; (ii) Gold; and (iii) Silver. As used herein, the term "member" may be used to refer generically to a Platinum Member, Gold Member, or a Silver Member.

**Section 3.2 Membership Qualifications.** The following shall be the requirements for membership in each membership class:

- (a) **Platinum Members.** The Platinum Members shall be individuals and entities that engage in or support the production, manufacture, use, sale or standardization of Linux or other open source-based technologies. A Platinum Member shall pay the annual membership dues identified on **Schedule A** to these Bylaws (the "Membership Dues Schedule"). A Platinum Member shall cease to be a member in the event of its resignation or expulsion from this corporation.
- (b) **Gold Members.** Gold Members shall be individuals and entities that engage in or support the production, manufacture, use, sale, or standardization of Linux or other open source-based technologies. A Gold Member shall pay the annual membership dues identified on the Membership Dues Schedule. A Gold Member shall cease to be a member in the event of its resignation or expulsion from this corporation.
- (c) **Silver Members.** Silver Members shall be individuals and entities that engage in or support the production, manufacture, use, sale, or standardization of Linux or other open source-based technologies. A Silver Member shall pay the annual membership dues identified on the Membership Dues Schedule. A Silver Member shall cease to be a member in the event of its resignation or expulsion from this corporation.

**Section 3.3 Affiliates; Additional Rights; Limitations on Voting Rights of Members; Etc.**

- (a) **Affiliates.** The Board of Directors may establish one or more classes of individuals or entities associated with this corporation. Such individuals or entities shall be referred to as "Advisors", "Affiliates", "Associates", "Contributors", or any other title as the Board of Directors deems appropriate (collectively, the "Affiliates"). Notwithstanding the foregoing, no class or classes of Affiliates shall have the right or be entitled to vote (i) in the election of any directors, (ii) on a sale, lease, exchange, or other disposition of all or substantially all of the assets of this corporation, (iii) on a merger of this corporation, (iv) on a dissolution or reorganization of this corporation, (v) on amendments to this corporation's Articles of Incorporation (the "Articles") or Bylaws, or (vi) on any other action otherwise requiring the vote of members. Further, Affiliates shall not be or have any of the rights and privileges of voting members as contemplated by Section 65.227 of the Act.\* \* References in these Bylaws to the "Act" are to the Oregon Nonprofit Corporation Act.
- (b) **Additional Rights and Privileges of Members and Affiliates.** The Board of Directors may by resolution establish such additional rights, privileges and duties corresponding to each class of members and Affiliates provided that such rights, privileges, and duties are consistent with the Articles and these Bylaws.
- (c) **Limitations on Voting Rights of Members.** Except as may be otherwise provided for by resolution of the Board of Directors, no member shall have the right

or be entitled to vote (i) on a sale, lease, exchange, or other disposition of all or substantially all of the assets of this corporation, (ii) on a merger of this corporation, (iii) on a dissolution or reorganization of this corporation, or (iv) on amendments to this corporation's Articles or Bylaws.

**Section 3.4 Admission.** Except as otherwise provided by resolution of the Board of Directors, admission of members shall be made by the Executive Director upon a determination by the Executive Director that the member meets the qualifications established for membership as set forth in these Bylaws.

**Section 3.5 Dues, Fees and Assessments.** The Membership Dues Schedule may only be amended or revised by a majority vote of the Board of Directors; provided, however, that any such amendment or revision shall not operate retroactively, nor shall any increase take effect until such time as any then-current member becomes obligated to pay its next annual membership dues. The Board of Directors may establish a policy for acceptance of in-kind contributions.

**Section 3.6 Termination of Membership.** The membership of any member shall terminate upon the occurrence of any one or more of the following:

**(a) Resignation.** Any member may resign from this corporation in a writing delivered to the Secretary of this corporation. The resignation of a member shall not relieve the member from any obligations the member may have to this corporation as a result of obligations incurred or commitments made prior to resignation, including without limitation, any membership dues, fees or assessments that are due and owing prior to the resignation. A resigning member shall not be entitled to receive any refund, pro rata or otherwise, of any membership dues, fees or assessments for the balance of the calendar year in which the resignation is effective.

**(b) Expulsion, Termination or Suspension.** Membership may be terminated by a majority of the Directors then in office after giving the member at least 15 days' written notice by first class or certified mail of the termination and the reasons for the termination, and (except in the case of termination for non-payment of membership dues, fees or assessments in timely fashion) an opportunity for the member to be heard by the Board, orally or in writing, no less than five days before the effective date of the termination. The decision of the Board shall be final and shall not be reviewed by any court.

**Section 3.7 Reinstatement.** Members suspended, terminated or expelled pursuant to Section 3.6(b) may be reinstated only upon the affirmative vote of a majority of the directors then in office.

**Section 3.8 Property Rights.** No member shall have any right or interest in any of the property or assets of this corporation, except for rights retained in any work contributed to this corporation, but only to the extent permitted by any policy relating to intellectual property rights approved by the Board of Directors and then in force.

**Section 3.9 Nonliability.** No member shall be liable for the debts, liabilities, or obligations of this corporation merely by reason of being a member.

**Section 3.10 Nontransferability.** No member may transfer for value or otherwise a membership or any right arising therefrom, and all rights of membership shall cease upon the member's death, resignation, expulsion, termination or dissolution. Notwithstanding the foregoing:

(1) Upon the completion of any acquisition or merger involving a single member in which the member is not the surviving entity, the Board of Directors in its discretion may permit such member's membership to be transferred to the surviving entity for the remainder of the then-current membership year if the surviving entity qualifies for membership as provided in these Bylaws; provided, however, that the surviving entity shall remain liable for any unpaid membership dues, fees, or assessments of the disappearing member.

(2) On the completion of any acquisition or merger involving two members, one of the two memberships shall be deemed to expire as of the effective date of the merger, which election shall be made by the surviving entity provided the surviving entity qualifies for membership in the elected class; provided, however, that there shall be no proration or refund of membership dues, fees or assessments for the year of the acquisition or merger and the surviving entity shall remain liable for any unpaid membership dues, fees, or assessments for both memberships for the entire then-current membership year; and

(3) The Board of Directors in its discretion may permit a member to transfer its membership to another entity within its same Control Group (as defined in Section 5.3(g), below) if the transferee qualifies for membership in the transferring member's class; provided, however, that the transferor and transferee shall be and remain jointly and severally liable for any unpaid membership dues, fees, or assessments of the transferring member.

The Board of Directors may grant a waiver of any provision of this Section 3.10 in its discretion.

**Section 3.11 Distribution of Assets upon Dissolution.** Upon dissolution of this corporation, and after all of the known debts and liabilities of this corporation have been paid or adequately provided for, any remaining net assets of this corporation shall be distributed by the Board of Directors to one or more organizations selected by the Board of Directors which will help to further the purposes of this corporation.

## ARTICLE IV

### Membership Meetings

**Section 4.1 Place of Meetings.** All meetings of members shall be held either at the principal office of this corporation or at any other place within or without the State of Oregon, as determined by the Board of Directors pursuant to the authority hereinafter granted to the Board of Directors.

**Section 4.2 Annual Meetings.** The annual meeting of each class of members of this corporation shall be held in each calendar year, on such date and at such time and place as determined by the Board of Directors. Annual meetings may be held in any manner permitted by law.

**Section 4.3 Special Meetings.** Special meetings of the members shall be held at the call of the Board of Directors, the Chairman of the Board, or members holding five percent (5%) or more of the voting power of this corporation by a written demand signed, dated, and delivered to the Secretary. Notice of a special meeting shall be given within thirty days following the date the written demand is delivered to the Secretary, in accordance with Section 4.4 below. Special meetings may be held in any manner permitted by law.

**Section 4.4 Notice of Meetings.** Notice of each annual and special meeting of the members and written ballot for election of directors or otherwise, if any, shall be given to each member at the last address of record, by first class mail or by any means other than mail (including electronic mail) at least seven days before the meeting. The notice shall include the date, time, and place of the meeting or the date on which the ballot shall be returned if applicable. Notice of each annual and special meeting shall include a description of any matter or matters that must be approved by the members pursuant to these Bylaws or applicable law. In the case of an annual meeting at which directors shall be elected, the notice shall specify the names of all those who are candidates for election of directors at the time the notice is given, and in the case of special meetings, the purpose or purposes for which the meeting is called. Such notice shall be given in writing to every member of this corporation who, on the record date for notice of the meeting, is entitled to vote thereat.

**Section 4.5 Adjourned Meetings.** Any members' meeting, annual or special, whether or not a quorum is present, may be adjourned by the vote of a majority of the members either present in person or represented by proxy. No meeting may be adjourned for more than 14 days, annual or special, to another time or place. It shall not be necessary to give any such notice of the time and place of the adjourned meeting or of the business to be transacted thereat, other than by an announcement at the meeting at which such adjournment is taken. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

**Section 4.6 Proxies.** Every member entitled to vote shall have the right to do so in person or by one or more agents authorized by a written proxy executed by such person or his duly authorized agent and filed with the Secretary of this corporation; but no such proxy shall be valid after the expiration of eleven (11) months from the date of its execution, unless the person executing it specifies therein the length of time for which such proxy is to continue in force. A proxy is effective when received by the Secretary or other officer or agent authorized to tabulate votes and must be received prior to the closing of the voting in order to be effective.

**Section 4.7 Quorum.** The votes represented in person or by proxy at a meeting of members shall constitute a quorum for the transaction of business. Unless otherwise provided herein, if a quorum is present in person or by proxy then any action approved by a majority of the members so present shall be the act of the members.

**Section 4.8 Voting.** Each member is entitled to one vote on each matter submitted to a vote of the members of such membership class. Single memberships in which two (2) or more persons have an indivisible interest shall be treated as provided in Section 65.227(2) of the Act. Voting shall be by voice vote, unless the chair of the meeting at which such vote takes place directs such voting to be by ballot. Cumulative voting for the election of directors or otherwise shall not be authorized.

**Section 4.9 Action by Written Ballot.** Any action that may be taken at any annual, regular or special meeting of members may be taken without a meeting if this corporation delivers a written ballot to every member entitled to vote on the matter. Such written ballot shall (i) set forth the proposed action, (ii) provide an opportunity to specify approval or disapproval of each proposed action, and (iii) specify a reasonable time within which to return the ballot to this corporation. Approval by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds any quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the total number of votes cast by ballot. Ballots shall be distributed to members at the last address of record by first class mail or by electronic mail. In any election of directors by written ballot, the ballot shall name the candidates for directors, and shall provide a space entitled "withhold" in which a member may indicate that the authority to vote for the election of directors is withheld. All ballots distributed in accordance with this Section 4.9 shall indicate the number of responses needed to meet any quorum requirement and, with respect to each matter other than the election of directors, state the percentage of approvals necessary to pass each matter. All written ballots distributed in accordance with this Section 4.9 shall specify a reasonable time by which the ballot must be received in order to be counted.

**Section 4.10 Conduct of Meetings.** Meetings of members shall be presided over by the Chairman of the Board of this corporation, or in his or her absence, by the Vice Chairman, or in his or her absence, by the Executive Director, and in the absence of all of them, by the chair chosen by a majority of the members present. The Secretary of this corporation shall act as the secretary of all meetings of members, provided that in his absence the presiding officer shall appoint another member to act as Acting Secretary of the meeting.

## ARTICLE V Board of Directors

**Section 5.1 Powers.** Subject to the limitations of the Articles, the Bylaws, and the Act, and subject to the duties of directors as prescribed by the Bylaws, all corporate powers shall be exercised by or under the authority of, and the business and affairs of this corporation shall be controlled by, the Board of Directors. The Board of Directors shall have the power to select and remove all officers, agents, employees and contractors, and to fix reasonable compensation therefor, to authorize and empower officers or agents to enter into contracts and other commitments on behalf of this corporation, and to appoint and delegate responsibilities and authority to committees, officers and agents.

**Section 5.2 Number of Directors.** The minimum authorized number of directors is ten (10). The number of directors may be set from time to time by resolution of a majority of directors then in office.

**Section 5.3 Composition of Board of Directors; Terms.** The directors serving on the Board of Directors shall be selected in the manner set forth in this Section 5.3.

**(a) Platinum Directors.** Each Platinum Member, voting individually as a class, shall elect a single director, with up to a maximum of ten (10) directors so elected. In the event that at any time there shall be more than ten Platinum Members, then any person or entity that thereafter becomes a Platinum Member shall become entitled, in the order of becoming a Platinum Member, to individually elect a director upon: (a) the resignation or termination of a Platinum Member theretofore entitled to elect a director, (b) notice by a Platinum Member entitled to elect a director that it is waiving its right to elect or replace a director, and the resignation or removal of any director then serving that had been elected by such member, or (c) the amendment of these Bylaws to expand the number of Board seats available to be filled by Platinum

Members. All directors elected by Platinum Members shall be known as "Platinum Directors". Each Platinum Director shall be and remain an employee, officer, or director of the Platinum Member that elected such director. Each Platinum Director shall be deemed to have been duly elected upon receipt by the Chairman of the Board of a written ballot delivered to the Chairman of the Board at any time on or after the date that a Platinum Member becomes a member in such class of membership in accordance with these Bylaws. Upon the termination of the membership of a Platinum Member pursuant to Section 3.6 for any reason, then any Platinum Director elected by such Platinum Member shall no longer be qualified to serve as a Platinum Director and shall be deemed to have immediately resigned. Upon termination of a Platinum Director's relationship as an employee, officer, or director of the Platinum Member that elected such director, such Platinum Director shall no longer be qualified to serve as a Platinum Director and shall be deemed to have immediately resigned.

**(b) Gold Directors.** The Gold Members, voting as a class, shall elect three (3) directors or such fewer number as equals the total number of Gold Members. Such directors shall be known as "Gold Directors". Each Gold Member shall be entitled to nominate a single individual in such election, provided that such nominee must be and remain an employee, officer, or director of the nominating Gold Member in order to be eligible to serve as a Gold Director. The Gold Directors shall be elected at a meeting of the Gold Members, by written ballot delivered to the Gold Members, or in some other manner authorized by the Act or these Bylaws. Upon the termination of the membership of a Gold Member pursuant to Section 3.6 for any reason, then any Gold Director nominated by such Gold Member shall no longer be qualified to serve as a Gold Director and shall be deemed to have immediately resigned. Upon termination of a Gold Director's relationship as an employee, officer, or director of the nominating Gold Member, such Gold Director shall no longer be qualified to serve as a Gold Director and shall be deemed to have immediately resigned.

**(c) Silver Director.** The Silver Members shall elect one (1) director. Such director shall be known as the "Silver Director". Each Silver Member shall be entitled to nominate a single individual in the election for the Silver Director provided, however, that in each case such nominee must be and remain an employee, officer, or director of the nominating member in order to be eligible to serve as a Silver Director. The Silver Director shall be elected at a meeting of the Silver Members, by written ballot to the Silver Members, or in some other manner authorized by the Act or these Bylaws. Upon the termination of the membership of a Silver Member pursuant to Section 3.6 for any reason, then any Silver Director nominated by such Silver Member shall no longer be qualified to serve as a Silver Director and shall be deemed to have immediately resigned. Upon termination of a Silver Director's relationship as an employee, officer, or director of the nominating Silver Member, such Silver Director shall no longer be qualified to serve as a Silver Director and shall be deemed to have immediately resigned.

**(d) At-Large Directors.** The Board of Directors may appoint or have elected up to five (5) directors known as the "At-Large Directors" or the "Directors At-Large". The At-Large Directors shall have full and complete voting rights and privileges as directors. For so long as the Technical Advisory Board ("TAB") remains affiliated with the corporation, the Board shall appoint, with the advice of the TAB, a single representative of the TAB to one of the At-Large Director seats, and such representative shall be known as the TAB At-Large Director. All other procedures and criteria pursuant to which the At-Large Directors are elected or appointed will be established by resolutions of the Board.

**(e) Observers.** Each Platinum, Gold and Silver Director and the TAB At-Large Director shall have the right to designate a single observer to attend meetings of the Board of Directors when such director is unable to be present, provided that such director provides prior notice to the Chairman of the Board and the Chairman of the Board approves the request, which request shall not be unreasonably denied. An observer permitted to attend shall have the right to participate in the general session but may not put forth or vote on any motion. Observers shall in no event have the right to attend or participate in any executive session attended only by directors.

**(f) Terms and Election Dates.** All directors shall hold office until their respective successors are elected. Except for adjustments that the Board shall make from time to time to maintain or create staggered terms upon any increase or decrease in the authorized number of directors, the term of office for Platinum Directors, Gold Directors, and the Silver Director shall be two years; such term of office shall run from February 1 to January 31 of the second calendar year after election. The Board shall make provisions to stagger the terms of the Gold Directors and the Silver Director so that each year the terms of as close as possible to one-half of such directors shall expire. The term of office for the At-Large Directors shall be one year; such term of office shall run from date of appointment or election to the last day of February of the following calendar year. There shall be no prohibition on re-election or re-designation of any director following the completion of that director's term of office. Elections of directors whose terms are expiring in any calendar year other than the At-Large Directors shall be held as soon as practicable following the commencement of the membership year. Unless elected by written ballot pursuant to Section 4.9, the positions of directors then expiring shall be filled and elections held at the annual meeting of members called for such purpose. Procedures governing elections of directors may be established pursuant to resolutions of the Board of Directors provided that such resolutions are consistent with these Bylaws and the Articles. The election or appointment of the At-Large Directors shall be held each year promptly following the election of the Platinum Directors, the Gold Directors, and the Silver Director, and shall be concluded as provided by resolution of the Board.

**(g) Restrictions on Eligibility to Serve as a Director; Control Groups.** No more than two (2) individuals employed by or performing monetarily compensated services for, a Control Group (as defined below) shall be permitted to serve as directors of this corporation at the same time. In addition, no more than one (1) individual employed by, or performing monetarily compensated services for a Control Group may serve as a director from the same membership class at any given time. For purposes of this section, "Control" shall mean (i) the ownership of more than 50% of the total voting securities of another entity, or (ii) in the case of unincorporated entities "Control" shall mean the ownership of more than 50% of the ownership interest representing the right to make decisions for the entity; and "Control Group" shall include all corporations or other entities which are Controlled by a Platinum Member, a Gold Member, or a Silver Member, which Control a Platinum Member, a Gold Member, or a Silver Member, or which are also Controlled by this corporation or entity Controlling a Platinum Member, a Gold Member, or a Silver Member.

**Section 5.4 Vacancies.** Vacancies in the Board of Directors (a) by reason of the expiration of a director's term (other than an At-Large Director) shall be filled in an election by a majority of a quorum of members in the class that elected such director, (b) of a Platinum Director due to the resignation of such director or removal of such director by the Platinum Member that elected such director, shall be filled by election by such Platinum Member, (c) of a Gold Director due to the resignation of such director or removal of such director by the Gold Members shall be filled by election of a majority of a quorum of Gold Members, (d) of a Silver Director due to the resignation of such director or removal of such director by the Silver Members shall be filled by election of a majority of a quorum of Silver Members, and (e) of an At-Large Director, shall be filled by vote of a majority of directors then in office. Notwithstanding the foregoing, the Board of Directors may appoint an interim director to fill any Gold Director or Silver Director vacancy occurring as a result of the amendment of these Bylaws to expand the number of directors representing such class until such time as a successor is elected by the members of the appropriate class(es); provided, however, that any such interim director must be an employee, officer, or director of a member in the appropriate membership class. Each director elected shall hold office until his or her successor is elected. A vacancy or vacancies shall be deemed to exist (i) in the case of the death or the resignation or removal of any director pursuant to this Article IV, (ii) if the authorized number of directors is increased without election of the additional directors so provided for, (iii) in the case of failure at any time to elect the full number of authorized directors, (iv) automatically, upon the failure of a director to attend three (3) consecutive regularly scheduled Board meetings, or (v) as provided in the last sentence of this Section 5.4. If an At-Large Director tenders his or her resignation to the Board of Directors, then the Board shall have the power to elect a successor to take office at such time as the resignation shall become effective. No reduction in the number of directors shall have the effect of removing any director prior to the expiration or other termination of his term of office. Notwithstanding anything else to the contrary in these Bylaws, at no time shall the number of At-Large Directors be equal to or greater than the aggregate number of Platinum, Gold and Silver Directors. If at any time an event or events shall occur that results in such a state of affairs, then notwithstanding anything else to the contrary in these Bylaws a majority of the Platinum, Gold and Silver Directors then in office shall elect such additional directors as shall be necessary to cause the aggregate number of directors other than the At-Large Directors to be greater than the number of At-Large Directors, provided, however, that each such additional

director must be and remain an employee, officer, or director of a Platinum, Gold or Silver Member in order to be eligible to serve as a director, and upon termination of such relationship, for any reason, such additional director shall no longer be qualified to serve as a director and shall be deemed to have immediately resigned.

**Section 5.5 Place of Meetings.** All meetings of the Board of Directors may be held at any place within or without the State of Oregon, which has been designated from time to time by resolution of the Board or by the written notice of the Chairman of the Board.

**Section 5.6 Regular Meetings.** Regular meetings of the Board of Directors shall be held at such intervals as may from time to time be approved by the Board of Directors.

**Section 5.7 Special Meetings.** Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board or by twenty percent (20%) or more of the directors then in office.

**Section 5.8 Notice of Meetings; Attendance.** Regular scheduled meetings of the Board of Directors may be held without notice of the date, time or purpose of the meeting. Notice of the time and place of each meeting of the Board of Directors not fixed by an express provision of the Bylaws or by a standing resolution of the Board of Directors shall be given to each director not less than two (2) days before the date of the meeting. Such notice may be given personally or by telephone, telegraph, facsimile, electronic mail, or first-class mail.

**Section 5.9 Action without Meeting.** Any action required or permitted to be taken by the Board of Directors under any provision of the Act may be taken without a meeting if all members of the Board shall individually or collectively consent in writing to such action. The action shall be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken. Action taken hereunder is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date. A consent signed hereunder has the effect of a meeting vote and may be described as such in any document.

**Section 5.10 Telephonic Meetings.** The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting through, use of any means of communication by which all directors participating may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

**Section 5.11 Quorum.** Unless otherwise provided herein, fifty-percent of the directors then in office (but in no case fewer than one-third of the fixed or prescribed number of directors provided for in these Bylaws) shall be necessary to constitute a quorum for the transaction of business except adjourn. 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 shall be regarded as the act of the Board of Directors unless a greater number is required by law, or by the Articles, or by these Bylaws.

**Section 5.12 Fees and Compensation.** Directors and members of committees may receive such compensation, if any, for their services and such reimbursement for expenses as may be fixed or determined by resolution of the Board of Directors; provided that such compensation shall be reasonable and shall be comparable to that compensation paid by unaffiliated entities for a like position. Nothing herein shall be considered to preclude any director from serving this corporation in any other capacity, including as an officer, agent, employee, consultant or otherwise, and receiving reasonable compensation therefor.

**Section 5.13 Indemnity.** The corporation shall indemnify its directors to the fullest extent allowed by Sections 65.391 through 65.397 of the Act.

**Section 5.14 Standard of Conduct.** Pursuant to Section 65.357 of the Act, a director shall discharge the duties of a director, including duties as a member of any committee of the Board upon which the director may serve, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the director reasonably believes to be in the best interests of the corporation. In discharging 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 if prepared or presented by: (a) one or more officers or employees of this corporation whom the director reasonably believes to be reliable and competent in the matters presented; (b) legal counsel, public accountants or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or (c) a committee of the Board of which the director is not a member, as to matters within the committee's jurisdiction, if the director reasonably believes the committee merits confidence. A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 5.14 unwarranted. A director is not liable to the corporation, any member or any other person for any action taken or not taken as a director, if the director acted in compliance with this Section 5.14. The liability of a director for monetary damages to the corporation and its members shall be eliminated to the fullest extent provided by Section 65.047(2)(c) of the Act.

**Section 5.15 Conflict of Interest Transactions.**

**(a) Conflict of Interest.** As used in this section, a "conflict of interest transaction" is a transaction with the corporation in which a director of the corporation has a direct or indirect interest. A director has an indirect interest in a transaction if another entity in which the director has a material interest or in which the director is a general partner is a party to the transaction, or if another entity of which the director is a director, officer or trustee is a party to the transaction and the transaction is or should be considered by the board of directors of the corporation.

**(b) Approval.** A conflict of interest transaction is not voidable or the basis for imposing liability on the director if the transaction is fair to the corporation at the time it was entered into or is approved either (I) in advance by the vote of the board of directors or a committee of the board of directors if the material facts of the transaction and the director's interest were disclosed or known to the board of directors or a committee of the board of directors, or (II) if the material facts of the transactions and the director's interest were disclosed or known to the members and they authorized, approved or ratified the transaction. A conflict of interest transaction is so authorized, approved or ratified as follows:

(i) **By Directors.** By the directors, if it receives the affirmative vote of a majority of the directors on the board of directors or on the committee who have no direct or indirect interest in the transaction; provided that a transaction may not be so authorized, approved or ratified by a single director. If a majority of the directors who have no direct or indirect interest in the transaction votes to authorize, approve or ratify the transaction, a quorum is present for the purpose of taking such action. The presence of, or a vote cast by, a director with a direct or indirect interest in the transaction does not affect the validity of any action so taken hereunder if the transaction is otherwise approved as permitted under Section 65.361 of the Act.

(ii) **By Members.** By the members, if it receives a majority of the votes entitled to be counted. Votes cast by or voted under the control of a director who has a direct or indirect interest in the transaction, and votes cast by or voted under the control of an entity described in subsection (4) of Section 65.361 of the Act may be counted in a vote of members to determine whether to authorize, approve or ratify a conflict of interest transaction hereunder. A majority of the members, whether or not present, that are entitled to be counted in a vote on the transaction hereunder constitutes a quorum for the purpose of taking action hereunder.

Section 5.16 Resignation and Removal.

(a) **Resignation.** Any director may resign at any time by giving written notice to the Board of Directors, the Chairman of the Board, or the Secretary of this corporation. A resignation is effective when the notice is effective under Section 65.034 of the Act, unless the notice specifies a later effective date. Once delivered, a notice of resignation is irrevocable unless permitted to be withdrawn by the Board of Directors prior to its effectiveness.

(b) **Removal for Cause.** The members may remove for cause, at a meeting called for that purpose, any director elected by the members who has been declared of unsound mind by a final order of court, or convicted of a felony, or found by a final order or judgment to have breached any duty arising under these Bylaws, the Articles or Section 65.357 of the Act. Only the members of the class that elected such director may vote to remove such director, and the director may be removed only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect such director. An At-Large Director may be removed with cause by the affirmative vote of two-thirds (2/3) of the directors then in office.

(c) **Removal without Cause.** Any director except an At-Large Director may be removed without cause at a meeting called for that purpose by the members of the class that elected such director. Such director may be removed hereunder only if the number of votes cast to remove the director would be sufficient to elect the director at a meeting to elect such director. An At-Large Director may be removed without cause by the affirmative vote of two-thirds (2/3) of the directors then in office.

**Section 5.17 Advisory Board.** The Board of Directors may, by resolution, establish a board of advisors (the "Advisory Board") to be comprised of one or more individuals chosen by the Board of Directors at its sole discretion. The Board of Directors shall not be bound by any advice or decision of the Advisory Board. The members of the Advisory Board shall not have the rights or privileges of directors or members as set forth in the Act and shall have no power or authority over the operation of this corporation. A member of the Advisory Board may be removed at any time by the Board of Directors with or without cause.

## ARTICLE VI

### Officers

**Section 6.1 Officers.** The officers of this corporation shall be a Chairman of the Board, Vice Chairman, Executive Director, Treasurer, Secretary and such other officers as the Board of Directors may appoint. One person may hold two or more offices.

**Section 6.2 Nomination and Election.** The officers of this corporation shall be elected annually by the Board of Directors in accordance with this Article 6. Each officer shall hold his or her office until he or she shall resign or shall be removed or his or her successor shall be elected and qualified. Elections of officers shall be held promptly following the election of directors each year. All officers other than the Executive Director must be directors of this corporation, and all directors may nominate candidates for officers of this corporation. All directors then in office may vote on candidates for such offices. Such offices shall be filled in an election upon the vote of a majority of directors then in office. Each officer's term of office shall be one year. There shall be no prohibition on re-election of an officer following the completion of that officer's term of office. The Board of Directors may, by resolution, establish procedures governing nomination and election of officers that are consistent with these Bylaws.

**Section 6.3 Removal and Resignation.**

(a) **Removal.** Any officer may be removed, either with or without cause, by the Board of Directors at any regular or special meeting thereof.

(b) **Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors, or to any officer of this corporation. Any such resignation shall take effect at the date of the receipt of such notice or at any later time specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Such resignation shall not prejudice the rights of this corporation under any contract to which the officer is a party. Once delivered, a notice of resignation is irrevocable unless otherwise permitted to be withdrawn by the Board of Directors prior to being effective.

**Section 6.4 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled in the manner prescribed in the Bylaws for regular appointments to such office.

**Section 6.5 Chairman of the Board.** The Chairman of the Board shall be the chief officer of the corporation. The Chairman of the Board shall serve as an ex-officio voting member of all committees, and shall have such other powers and duties as may be designated from time to time by the Board of Directors. The then-serving Chairman of the Board shall have the authority to cast a tie-breaking vote in the election of any directors or officers other than Chairman of the Board.

**Section 6.6 Vice Chairman.** The Vice Chairman shall perform all of the duties of the Chairman of the Board and in so acting shall have all of the powers of the Chairman of the Board in the event of the absence, death, removal, resignation or incapacity of the Chairman of the Board. The then-serving Vice Chairman shall have the authority to cast a tie-breaking vote in the election of the Chairman of the Board. A candidate for the office of the Vice Chairman must be a director of this corporation in order to be eligible to run for election. The Vice Chairman shall have such other powers and duties as may be designated from time to time by the Board of Directors.

**Section 6.7 Executive Director.** Subject to the supervision and control of, and reporting to, the Board of Directors, the Executive Director shall have general supervision, direction and control of the business and affairs of this corporation. The Executive Director shall from time to time report to the Board of Directors and the

Chairman of the Board all matters within the Executive Director's knowledge affecting the corporation that should be brought to the attention of the Board of Directors. A candidate for the office of Executive Director must not be an employee, officer or director of a member or a Control Group. The Executive Director shall have such other powers and duties as may be designated from time to time by the Board of Directors.

**Section 6.8 Treasurer.** The Treasurer shall have overall responsibility for all corporate funds, and shall perform, or cause to be performed, the following: (a) keeping of full and accurate accounts of all financial records of the corporation; (b) deposit of all monies and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors; (c) disbursement of all funds when proper to do so; (d) making financial reports as to the financial condition of the corporation to the Board of Directors; and (e) such other powers and duties as may be designated from time to time by the Board of Directors. A candidate for the office of the Treasurer must be a director of this corporation in order to be eligible to run for election.

**Section 6.9 Secretary.** The Secretary shall have overall responsibility for all recordkeeping. The Secretary shall perform, or cause to be performed, the following: (a) official recording of the minutes of all proceedings of the Board of Directors, including the committees thereof, and members' meeting and actions; (b) provision for notice of all meetings of the Board of Directors and members; (c) authentication of the records of the corporation; (d) maintaining current and accurate membership lists; and (e) any such other powers and duties as may be designated from time to time by the Board of Directors. A candidate for the office of the Secretary must be a director of this corporation in order to be eligible to run for election.

**Section 6.10 Standards of Conduct for Officers.** Pursuant to Section 65.377 of the Act, an officer shall discharge the officer's duties, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner the officer reasonably believes to be in the best interests of the corporation. In discharging the duties of an officer, an officer shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case if prepared or presented by: (a) one or more officers or employees of this corporation whom the officer reasonably believes to be reliable and competent in the matters presented; or (b) legal counsel, public accountants or other persons as to matters the officer reasonably believes are within the person's professional or expert competence. An officer is not acting in good faith if the officer has knowledge concerning the matter in question that makes reliance otherwise permitted in this Section 6.10 unwarranted. An officer is not liable to the corporation, any member or any other person for any action taken or not taken as an officer, if the officer acted in compliance with this Section 6.10. The liability of an officer for monetary damages to the corporation and its members shall be eliminated to the fullest extent permitted by Section 65.047(2)(c) of the Act.

**Section 6.11 Indemnity.** The corporation shall indemnify its officers to the fullest extent allowed by Section 65.407 of the Act.

## ARTICLE VII Committees

**Section 7.1 Appointment of Committees.** The Board of Directors may appoint such committees as the Board from time to time deems necessary or appropriate to conduct the business and further the objectives of this corporation. The appointment by the Board of any committee having the authority of the Board shall be by resolution adopted by a majority of directors then in office. Any committee having authority of the Board shall consist of two (2) or more directors who serve at the pleasure of the Board. The Board of Directors shall retain the right to limit the powers and duties of any committee that it has created and to disband any such committees in its sole discretion.

**Section 7.2 Powers and Authority of Committees.** The Board of Directors may delegate to any committee having the authority of the Board, any of the powers and authority of the Board of Directors in the management of the business and affairs of this corporation; provided, however, that no committee may: (a) authorize distributions; (b) approve or recommend to members dissolution, merger or the sale, pledge or transfer of all or substantially all of this corporation's assets; (c) elect, appoint, or remove directors or fill vacancies on the board or on any of its committees; or (d) adopt, amend or repeal the Articles, the Bylaws, or any resolution of the Board of Directors.

## ARTICLE VIII Miscellaneous

**Section 8.1 Fiscal Year.** The fiscal year of this corporation shall end on the last day of December of each year.

**Section 8.2 Inspection of Corporate Records.** A member's right to inspect and copy records of the corporation shall be as provided in and subject to the terms and conditions of Sections 65.774 and 65.777 of the Act.

**Section 8.3 Representation of Shares of Other Corporations.** The Board of Directors is authorized to vote, represent and exercise on behalf of this corporation all rights incident to any and all shares or other membership interests of any other corporation or organizations standing in the name of this corporation. The Board of Directors, pursuant to resolutions, may delegate this authority to one or more officers of the corporation, and may be exercised in person by such officer or by other persons authorized to do so by proxy duly executed by such officer.

**Section 8.4 Checks, Drafts, Etc.** All checks, drafts or other orders for payment of money, notes or other evidences of indebtedness issued in the name of or payable to this corporation and any and all securities owned by or held by this corporation requiring signature for transfer shall be signed or endorsed by such person or persons and in such manner as from time to time shall be determined by the Board of Directors.

**Section 8.5 Execution of Contracts.** The Board of Directors may authorize any officer, employee, or agent to enter into any contract or execute any contract or execute any instrument in the name of and on behalf of this corporation and such authority may be general or confirmed to specific instances. Unless so authorized by the Board of Directors, no officer, agent, or employee shall have any power or authority to bind this corporation by any contract or engagement or to pledge its credit or

to render it liable for any purpose or in any amount; provided, however, that any such contract or instrument between this corporation and any third person, when signed by (i) the Chairman of the Board or Vice Chairman, and (ii) the Secretary or Treasurer of this corporation, shall be valid and binding upon this corporation in the absence of actual knowledge on the part of said third person that the signing officers had no authority to execute the same.

**Section 8.6 Corporate Loans, Guarantees and Advances.** This corporation shall not make any advances or make any loan of money or property to or guarantee the obligation of any director or officer.

**Section 8.7 Maintenance of Records.** This corporation shall maintain corporate records as required by Sections 65.771 and 65.774 of the Act.

**Section 8.8 Political Activities.** This corporation shall not make any political expenditure or lobbying expenditure which will result in the loss of, or otherwise adversely affect, its status as a tax-exempt organization under the Internal Revenue Code of 1986, as amended.

**Section 8.9 Form of Written Ballots.** Ballots submitted in facsimile or electronic form shall be considered acceptable substitutes for printed ballots for all purposes.

## ARTICLE IX

### Effective Date, Amendments and Dissolution

**Section 9.1 Effective Date.** These Bylaws shall become effective immediately upon their adoption. Amendments to these Bylaws shall become effective immediately upon their adoption unless the Board of Directors of this corporation in adopting them provide that they are to become effective at a later date.

**Section 9.2 Bylaw Amendments.** To the fullest extent permitted by the Act, the authority to make, alter, amend or repeal these Bylaws is vested exclusively in the Board of Directors and may be exercised upon approval of a majority of directors then in office without the vote or consent of any member(s) or third parties.

**Section 9.3 Dissolution.** This corporation may be dissolved upon the approval of a majority of the directors then in office without the vote or consent of any member(s) or third parties. Any distribution of the assets of this corporation shall be made in a manner consistent with the tax status of this corporation at the time of such dissolution.

## Schedule A

### Membership Dues Schedule

Effective May 14, 2008

Members	Annual Membership Dues*
Platinum	US\$ 500,000
Gold	US\$ 100,000
Silver	US\$ 20,000 (employee size greater than 5,000) US\$ 15,000 (employee size between 500 and 4,999) US\$ 10,000 (employee size between 100 and 499) US\$ 5,000 (employee size <100)

\*As used above, "employees" refers to the number of employees and consultants that a Silver Member has as of the date of its initial application, in the case of a new member, and as of December 31, in the case of a renewing member

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