

# **NFC FORUM, INC.**

## **BY-LAWS**

As approved on May 30, 2016

## Table of Contents

<b>ARTICLE I</b>	<b>NAME, PURPOSE AND OFFICES</b> .....	<b>6</b>
Section 1.1	Name .....	6
Section 1.2	Principal Office.....	6
Section 1.3	Other Offices .....	6
Section 1.4	Purpose .....	6
Section 1.5	Nonprofit Status .....	7
<b>ARTICLE II</b>	<b>MEMBERS</b> .....	<b>7</b>
Section 2.1	Classes of Membership .....	7
Section 2.2	General Conditions of Membership .....	8
Section 2.3	Privileges of Sponsor Membership .....	8
Section 2.4	Privileges of Principal Membership .....	9
Section 2.5	Privileges of Associate Membership .....	9
Section 2.6	Eligibility and Privileges for Non-Profit Membership.....	10
Section 2.7	Privileges of Implementer Membership .....	10
Section 2.8	Rights in Intellectual Property.....	11
Section 2.9	Related Companies .....	12
Section 2.10	Additional Classes of Members.....	13
Section 2.11	Deprivation or Suspension of Membership .....	13
Section 2.12	Resignation by Member .....	14
Section 2.13	Membership Book .....	14
Section 2.14	Levy of Dues, Assessments or Fees .....	15
Section 2.15	Use of Names .....	15
Section 2.16	Membership Level Changes .....	15
<b>ARTICLE III</b>	<b>MEETINGS OF MEMBERS</b> .....	<b>16</b>
Section 3.1	Place of Meetings.....	16
Section 3.2	Annual Meeting.....	16
Section 3.3	Special Meetings .....	16
Section 3.4	Notice of Meetings .....	17
Section 3.5	Voting List.....	17
Section 3.6	Quorum .....	17
Section 3.7	Adjournments .....	18
Section 3.8	Action at Meetings .....	18

Section 3.9	<i>Proxies</i> .....	19
Section 3.10	<i>Action Without Meeting or by Electronic Ballot</i> .....	19
Section 3.11	<i>Order of Business</i> .....	20
<b>ARTICLE IV</b>	<b>DIRECTORS</b> .....	<b>20</b>
Section 4.1	<i>Powers; Voting</i> .....	20
Section 4.2	<i>Number of Directors</i> .....	20
Section 4.3	<i>Nomination, Election and Term of Office of Directors</i> .....	21
Section 4.4	<i>Enlargement or Reduction</i> .....	22
Section 4.5	<i>Resignation and Removal</i> .....	22
Section 4.6	<i>Vacancies</i> .....	22
Section 4.7	<i>Place of Meetings</i> .....	22
Section 4.8	<i>Regular Meetings</i> .....	22
Section 4.9	<i>Special Meetings</i> .....	23
Section 4.10	<i>Quorum, Action at Meeting, Adjournments</i> .....	23
Section 4.11	<i>Action by Consent</i> .....	25
Section 4.12	<i>Telephonic Meetings</i> .....	26
Section 4.13	<i>Inspection Rights</i> .....	26
Section 4.14	<i>Fees and Compensation</i> .....	26
Section 4.15	<i>Notification of Pending Legal Actions</i> .....	27
<b>ARTICLE V</b>	<b>BOARD COMMITTEES AND OTHER COMMITTEES</b> .....	<b>27</b>
Section 5.1	<i>Board Committees</i> .....	27
Section 5.2	<i>Meetings of Board Committees</i> .....	28
Section 5.3	<i>Term of Office of Members of Board Committees</i> .....	28
Section 5.4	<i>Member Committees</i> .....	28
<b>ARTICLE VI</b>	<b>OFFICERS</b> .....	<b>30</b>
Section 6.1	<i>Officers</i> .....	30
Section 6.2	<i>Vacancies</i> .....	30
Section 6.3	<i>Election</i> .....	30
Section 6.4	<i>Tenure</i> .....	31
Section 6.5	<i>Chairman</i> .....	31
Section 6.6	<i>Executive Director</i> .....	31
Section 6.6	<i>Vice-Chairmen</i> .....	31
Section 6.7	<i>Secretary</i> .....	32
Section 6.8	<i>Assistant Secretaries</i> .....	32
Section 6.9	<i>Treasurer</i> .....	32

Section 6.10	<i>Compensation</i> .....	33
<b>ARTICLE VII</b>	<b>NOTICES</b> .....	<b>33</b>
Section 7.1	<i>Delivery</i> .....	33
Section 7.2	<i>Waiver of Notice</i> .....	34
<b>ARTICLE VIII</b>	<b>INDEMNIFICATION</b> .....	<b>34</b>
Section 8.1	<i>Actions other than by or in the Right of the Consortium</i> .....	34
Section 8.2	<i>Actions by or in the Right of the Consortium</i> .....	35
Section 8.3	<i>Success on the Merits</i> .....	35
Section 8.4	<i>Specific Authorization</i> .....	35
Section 8.5	<i>Advance Payment</i> .....	36
Section 8.6	<i>Non-Exclusivity</i> .....	36
Section 8.7	<i>Jurisdiction of Delaware Court of Chancery</i> .....	36
Section 8.8	<i>Insurance</i> .....	36
Section 8.9	<i>Continuation of Indemnification and Advancement of Expenses</i> .....	36
Section 8.10	<i>Severability</i> .....	37
Section 8.11	<i>Intent of Article</i> .....	37
<b>ARTICLE IX</b>	<b>BOOKS AND RECORDS</b> .....	<b>37</b>
Section 9.1	<i>Books and Records</i> .....	37
Section 9.2	<i>Form of Records</i> .....	37
Section 9.3	<i>Reports to Directors, Members and Others</i> .....	37
Section 9.4	<i>Record Date</i> .....	37
Section 9.5	<i>Registered Members</i> .....	38
<b>ARTICLE X</b>	<b>CERTAIN TRANSACTIONS</b> .....	<b>38</b>
Section 10.1	<i>Transactions with Interested Parties</i> .....	38
<b>ARTICLE XI</b>	<b>GRANTS, CONTRACTS, LOANS, ETC.</b> .....	<b>39</b>
Section 11.1	<i>Grants</i> .....	39
Section 11.2	<i>Execution of Contracts</i> .....	39
Section 11.3	<i>Checks, Drafts, Etc.</i> .....	39
Section 11.4	<i>Deposits</i> .....	40
<b>ARTICLE XII</b>	<b>GENERAL PROVISIONS</b> .....	<b>40</b>
Section 12.1	<i>Fiscal Year</i> .....	40
Section 12.2	<i>Reserves</i> .....	40
Section 12.3	<i>Seal</i> .....	40
Section 12.4	<i>Proprietary Rights</i> .....	40

<b>ARTICLE XIII</b>	<b>ANTITRUST COMPLIANCE</b> .....	<b>41</b>
	<i>Section 13.1</i> <i>General</i> .....	<i>41</i>
	<i>Section 13.2</i> <i>Availability of Intellectual Property</i> .....	<i>41</i>
	<i>Section 13.3</i> <i>No Obligation to Endorse</i> .....	<i>41</i>
<b>ARTICLE XIV</b>	<b>TRADEMARK, NAME AND LOGO USAGE</b> .....	<b>42</b>
<b>ARTICLE XV</b>	<b>AMENDMENTS</b> .....	<b>42</b>

## **ARTICLE I**

### **NAME, PURPOSE AND OFFICES**

#### **Section 1.1 Name**

The name of the corporation is “NFC Forum, Inc.” and the corporation is referred to in these By-laws as the “Consortium”.

#### **Section 1.2 Principal Office**

The principal office of the Consortium shall be located at 401 Edgewater Place, Suite 600, Wakefield, Massachusetts, U.S.A. 01880. The Board of Directors is hereby granted full power and authority to change said principal office from one location to another both within and without said state.

#### **Section 1.3 Other Offices**

Branch or subordinate offices may at any time be established by the Board of Directors at any place or places.

#### **Section 1.4 Purpose**

The nature of the business or purposes to be conducted or promoted by the Consortium is to engage in any lawful act or activity for which corporations which are organized not for profit may be organized under the General Corporation Law of Delaware. The primary purpose of the Consortium is to promote the development and adoption of open, accessible standards and respective Specifications (as defined in the IPR Policy) as well as recommendations and solutions relating to Near Field Communication (collectively, “Specifications and Other Solutions”); to promote such Specifications and Other Solutions worldwide; to provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications and Other Solutions; to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications and Other Solutions; and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. Notwithstanding the above, except as the Board of Directors may from time to time deem appropriate or reasonable in its sole discretion, the Consortium: (i) shall not engage in any standardization or like activities that are, or already have been, sufficiently covered by another standard setting entity or entities and (ii) shall, where available and appropriate, reference existing standards rather than undertake to develop new standards.

The Consortium intends to engage in some or all of the following activities: (a) drive the development of, disseminate, support and maintain the Specifications and Other Solutions, (b) develop and/or fund the development of interoperability and/or certification tests relating to Specifications and Other Solutions, (c) administer or subcontract testing services relating to Specifications and Other Solutions, (d) create and own distinctive trademarks, service marks and/or certification marks relating to Specifications and Other Solutions, (e) administer or subcontract a branding program relating to Specifications and Other Solutions, (f) create various printed and/or electronic materials for distribution to Members (as defined in Section 2.1) and non Members, (g) maintain its own Web site, (h) coordinate the promotion of Specifications and Other Solutions among Members and non Members, as well as create basic marketing promotional collateral (e.g., both Web pages as well as tangible materials), (i) maintain relations with, and leverage standards developed by other standard setting organizations and industry consortia to ensure coherence among Specifications and Other Solutions maintained by the Consortium and such other organizations, and (j) undertake those other activities which its Board of Directors may from time to time approve.

### **Section 1.5     *Nonprofit Status***

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

(b) The Board of Directors may, in its sole discretion, elect to seek exemption from Federal taxation for the Consortium pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the “Code”). In the event that such exemption is sought and until such time, if ever, as such exemption is denied or lost, the Consortium shall not knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

## **ARTICLE II**

### **MEMBERS**

#### **Section 2.1     *Classes of Membership***

The Consortium shall have five classes of membership: Sponsor Members, Principal Members, Associate Members, Implementer Members, and Non-Profit Members. Additional classes of voting and non-voting Members may be created in the future, and the rights of existing classes of Members may be amended, in each case pursuant to Section 2.10 of these By-laws. Sponsor Members and Principal Members, and any future classes of Members that are entitled to

voting rights in the Consortium, shall be collectively referred to as “Voting Members”. All voting and non-voting memberships in the Consortium are collectively referred to in these By-laws as “Memberships”, and a person or entity holding Membership is referred to in these By-laws as a “Member”.

## **Section 2.2     *General Conditions of Membership***

Any association, partnership, organization, governmental agency, company, corporation, academic or non-profit entity shall be admitted to Membership by: (a) acceptance by the Consortium of its written application therefor on such form as may be from time to time required by the Consortium (the “Membership Application”) (which acceptance shall be administered in a non-discriminatory fashion) and (b) payment of such application fees, initiation fees (if any), annual dues (the “Annual Membership Fees”) or other fees for such class of Membership as may from time to time be established by the Board of Directors.

Companies that commit to actively participate in the work of the Consortium and that can significantly contribute to the NFC ecosystem by adopting the technology in products and services and by promoting the technology may apply for Sponsor Membership. The total number of Sponsor Members shall be at least one (1) and not more than seventeen (17). In considering the admission of a new Sponsor Member, the Board of Directors may take into account the impact that the admission of an applicant may have on the balance of representation on the Board (e.g., with reference to industry segments and geography). In so doing, the Board of Directors may also take into account the demonstrated commitment of the applicant to NFC technology and to the NFC Forum, and the realities of the marketplace and the NFC Forum at the time of making a decision (e.g., whether there are more applicants than vacancies, and past experiences in attracting candidates in any under-represented industry segments or geographies.)

A Member shall remain in good standing as a Member provided (i) such Member has paid all application fees, initiation fees, Annual Membership Fees, subsequent dues, assessments, and other fees, together with such penalties for late payment as may be determined by the Board of Directors, within the period set by the Board of Directors, (ii) the Member continues to meet all of the other requirements of Membership, as from time to time determined by the Board of Directors, (iii) the Member’s Membership has not been suspended pursuant to Section 2.11. Each Member shall participate in the activities of the Consortium in good faith and as is reasonable, taking into account the Membership level of the Member in question, and shall not take any action intended to subvert or disrupt the activities of the Consortium, provided, however, that this Section 2.2 shall not be read to imply any limitation of Section 13.3 of these By-laws.

## **Section 2.3     *Privileges of Sponsor Membership***

Each Sponsor Member, while in good standing, shall be entitled to:

- (a) designate one representative to serve as a member of the Board of Directors (each member of the Board of Directors is a “Director”);

- (b) designate one representative to run for election to any position as an officer of the Consortium (each an “Officer”);
- (c) appoint one voting representative to each Member Committee and Sub-Group (as defined in Section 5.4), and, subject to the availability of seats and to requisites and limitations defined by the sole discretion of the Board of Directors, appoint non-voting representatives to each Member Committee and Sub-Group (which appointee need not be the same individual for all such Member Committees and Sub-Groups); and
- (d) all Principal Member rights other than those set forth in Section 2.4(d).

### **Section 2.4     *Privileges of Principal Membership***

Each Principal Member, while in good standing, shall be entitled to:

- (a) designate a representative to run for election as chairman, vice-chairman, or any other office of any Member Committee and any Sub-Group;
- (b) propose initiatives to be acted upon by the Consortium;
- (c) vote on each matter submitted to a vote of the Voting Members;
- (d) subject in each instance to the availability of seats and to such requisites and limitations as the Board of Directors may define in its sole discretion from time to time: (i) appoint one voting representative to each Member Committee and Sub-Group and (ii) appoint non-voting representatives to each Member Committee and Sub-Group (which representative need not be the same individual for any such Member Committee or Sub-Group);
- (e) receive discount on meeting registration fee for an unlimited number of attendees;
- (f) participate in NFC Forum Certification Program using their own in-house test laboratories; and
- (g) all Associate Member rights other than those set forth in Sections 2.5(a) and (d).

### **Section 2.5     *Privileges of Associate Membership***

Each Associate Member, while in good standing, shall be entitled to:

- (a) subject to the availability of seats and to such requisites and limitations as the Board of Directors may define in its sole discretion from time to time, appoint non-voting representatives to each working group formally established by the Consortium (each a “Working Group”) and each Sub-Group of each such Working Group, which representative need not be the same individual for any such Working Group and Sub-Group thereof;
- (b) designate a representative to run for election as officer of any Working Group or Sub-Group thereof;

- (c) receive one copy by electronic distribution, without charge, of all publications of the Consortium that are intended for public distribution, prior to distribution to the public, including pre-public access to draft versions of the Specifications and Other Solutions under development;
- (d) receive discount on meeting registration fee for two (2) attendees; and
- (e) all Implementer Member rights other than those set forth in Sections 2.7(a), (b) and (g).

**Section 2.6 Eligibility and Privileges for Non-Profit Membership**

Eligibility in the Non-Profit membership category is limited to entities that have a non-commercial or public service mission, including government agencies, quasi-governmental entities, academic institutions, research institutions, and open membership organizations, such as trade associations and standards development organizations. The Consortium reserves the right in its sole discretion to determine if any specific applicant, whether or not legally organized as a not for profit entity, meets the foregoing criteria. If the foregoing criteria are not met by the applicant, the applicant may join at a different membership level instead.

If the non-profit status of an existing Non-Profit Member has been revoked by the tax authority, the Member shall inform the Consortium and may not renew its Non-Profit Membership, but may join at a different membership level.

Each Non-Profit Member, while in good standing, shall be entitled to:

- (a) receive discount on meeting registration fee for one (1) attendee; and
- (b) all Associate Member rights other than those set forth in Section 2.5 (d) above.

**Section 2.7 Privileges of Implementer Membership**

Each Implementer Member, while in good standing, shall be entitled to:

- (a) subject to the availability of seats and to such requisites and limitations as the Board of Directors may define in its sole discretion from time to time, appoint non-voting representatives to working groups of the “SIG Committee” (each a “SIG Committee Working Group”) and each Sub-Group of each such SIG Committee Working Group, which representative need not be the same individual for any such SIG Committee Working Group and Sub-Group thereof;
- (b) designate a representative to run for election as officer of any SIG Committee Working Group and each Sub-Group thereof;
- (c) receive one copy by electronic distribution, without charge, of all publications of the Consortium that are intended for public distribution, prior to distribution to the public, including pre-public access to draft versions of the Specifications upon distribution of the Draft Specification for All Members IPR Election;

- (d) attend all annual and special meetings of the Members provided for in Article III of these By-laws;
- (e) placement of a link to such Member's Web site on the Consortium Web site;
- (f) display the Consortium logo on Member's Web site, to indicate Membership in the Consortium;
- (g) receive Member discount on each product certification and Plugfest participation according to the NFC Forum compliance program;
- (h) receive discount on meeting registration fee for one (1) attendee;
- (i) receive such free or discounted services provided by the Consortium as the Board of Directors may designate from time to time; and
- (j) such other benefits, rights and privileges as the Board of Directors may designate or the Voting Members may from time to time institute by vote at any meeting of the Members.

## **Section 2.8     *Rights in Intellectual Property***

All rules relating to intellectual property of any type, including without limitation, (i) patents, patents applications and copyrights anywhere in the world and (ii) any of the same which may be represented by any Specifications and Other Solutions, guidelines, policies, procedures and tests which may from time to time be submitted to or adopted or created by the Consortium (collectively, "Intellectual Property"), specific license rights that may be granted therein (to the extent that the Consortium has the right to grant the same), and the fees (if any) which the Consortium may charge Members and third parties for access to and use of such Intellectual Property, shall be subject to such Consortium's Intellectual Property Rights Policy (the "IPR Policy") and related rules of procedure (the "Rules of Procedure") as may from time to time be adopted, amended or modified by an affirmative Strong Super Majority Vote of the Board of Directors; provided, however, that any provision in the Certificate of Incorporation, these By-laws, the IPR Policy and/or the Rules of Procedure, and/or any amendment to any of the same, that may affect the rights of a Member with respect to Intellectual Property shall only have prospective effect, and shall not take effect fewer than sixty (60) days after notice of such change has been sent to all Members; and provided, further, that in the event of the resignation, termination or expiration of Membership of a Member (including dissolution of the Consortium), all obligations incurred by such Member relating to Intellectual Property under the Certificate of Incorporation, these By-laws, the IPR Policy and/or the Rules of Procedure and/or any amendment to any of the same prior to the date of such resignation, termination or expiration shall continue in full force and effect, to the extent such obligations are intended to or are expressly stated in the Certificate of Incorporation, these By-laws, the IPR Policy and/or the Rules of Procedure and/or any amendment to any of the same to survive such resignation, termination or expiration.

## **Section 2.9 Related Companies**

- (a) Only the legal entity that has been accepted as a Member of the Consortium, and its subsidiaries, being entities controlled by a Member due to the Member having either directly or indirectly more than 50% of the voting rights in such subsidiaries (each a “Subsidiary”, provided that such entity is not itself an independent Member in good standing), and not any parent or other affiliates of any Member, shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member (the “Controlling Member”) and its Subsidiaries shall be treated together as a single Member.
- (b) Only one Member that is part of a group of Related Companies shall be entitled to have a representative on the Board of Directors at one time. For purposes of these By-laws, the term “Related Company” shall mean any entity which controls or is controlled by a Member or which, together with a Member, is under the common control of a third party, in each case where such control results from ownership, either directly or indirectly, of more than 50% of the voting rights in the entity in question.
- (c) If a Member is itself a consortium, membership organization, user group or other entity which has members or sponsors, then the rights and privileges granted to such Member shall extend only to the paid employees or volunteer leader of such Member, and not to its members or sponsors.
- (d) Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its Membership for the then current year to (i) a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; or (ii) to a Related Company that is also its direct or indirect parent; in each case, provided that the transferee agrees to be bound by these By-laws, the Certificate of Incorporation and such policies and procedures as the Board of Directors may from time to time adopt.
- (e) The Membership Application shall require that all entities applying for Membership in the Consortium are ultimate parent groups within their respective groups of companies, i.e., that no entity has more than 50% of voting rights in such applying entity, unless:
  - (i) the applying entity obtains a co-signature of the ultimate parent company within its group of companies binding its Related Parties to the IPR Policy of the Consortium; or
  - (ii) the Board of Directors passes a resolution with a Strong Super Majority Vote that no such co-signature is required provided further that the applying entity provides in the Membership Application contractual safeguards as deemed sufficient by the Board of Directors to address the risks associated with Intellectual Property owned or controlled by the Related Parties of the applying entity and also provides the Board of Directors with sufficient explanation of why no such co-signature is feasible.

- (f) Subsidiaries of Members may apply for Membership in non-voting Membership classes. In the event that the Membership of such a subsidiary is suspended or terminated, it may nevertheless participate in activities of the Consortium to the extent otherwise permitted to Subsidiaries that are not Members in their own right.

If an entity applies for Membership while one of its Subsidiaries is a Voting Member, then such Subsidiary either:

- (i) shall be demoted to a non-voting Membership class effective the date of acceptance of Membership of the new Member (without refund of any Membership or other fees already paid); or
- (ii) may chose to resign from its membership effective the date of acceptance of Membership of the new Member (which has the effect that the new Member and its Subsidiaries shall be treated together as a single Member).
- (iii) may transfer its Membership to the Controlling Member to the extent otherwise permissible under Section 2.9(d) above.

Applications for Membership of Subsidiaries must fulfill Section 2.9 (e).

- (g) Change of Control

If a Member becomes the Subsidiary of another Member, rules equivalent to Section 2.9(f) shall be applied.

If a Member becomes the Subsidiary of a third party that is not a Member in the Consortium, such Member shall:

- (i) provide a co-signature of its new ultimate parent company as described in Section 2.9(e)(i); or
- (ii) transfer its Membership to an appropriate parent company as described in Section 2.9(d), and, if such entity is not its ultimate parent, in addition provide a co-signature of such ultimate parent as described in Section 2.9(e)(i)..

### ***Section 2.10 Additional Classes of Members***

The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one or more additional classes of Membership in the Consortium may be created, and the conditions, voting rights (if any), powers and privileges of each such class may be prescribed, by adoption of an amendment to these By-laws pursuant to Article XV of these By-laws.

### ***Section 2.11 Deprivation or Suspension of Membership***

Any Member in good standing may be deprived of its Membership or be suspended as a Member for material cause, and any Member not in good standing may be deprived of its Membership or can be suspended as a Member without cause, by the Board of Directors with a Super Majority Vote. Any application fees, initial fees, Annual Membership Fees, assessments,

other fees and/or penalties already paid shall not be refundable upon the Member's suspension or deprivation of Membership, and all fees of such Member which may be accrued and unpaid as of such date shall remain due and payable. Additionally, notwithstanding any such deprivation or suspension, all obligations relating to Intellectual Property incurred by such Member and/or its Related Companies prior to the date of such deprivation or suspension shall continue in full force and effect pursuant to Section 2.8 of these By-laws. No deprivation or suspension of Membership (other than for non-payment of dues, assessments or fees) shall be effective, however, unless:

(a) The Member is given notice of the proposed deprivation or suspension of Membership and of the reasons therefor;

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

(c) Such notice is given at least thirty (30) days prior to the effective date of the proposed deprivation or suspension of Membership; and

(d) Such notice sets forth a procedure determined by the body (said body to consist of the Board of Directors or a Board Committee (as defined in Section 5.1) selected for that purpose by the Board of Directors) authorized to decide whether or not the proposed deprivation or suspension shall take place, whereby the Member is given the opportunity to be heard by such body, either orally (and represented by counsel if the Member so desires) or in writing, not less than five (5) days before the effective date of the proposed deprivation or suspension.

Any deprivation or suspension of Membership for non-payment of dues, assessments or fees may be effected by written notice from the Chairman of the Consortium (the "Chairman") pursuant to such rules as the Board of Directors may from time to time adopt.

### ***Section 2.12 Resignation by Member***

A Member may resign as a Member at any time. Any application fees, initial fees, Annual Membership Fees, assessments, other fees and/or penalties already paid shall not be refundable in such event, and all fees of such Member which may be accrued and unpaid as of such date shall remain due and payable. Additionally, notwithstanding such resignation, all obligations relating to Intellectual Property incurred by such Member and/or its Related Companies prior to the date of such resignation shall continue in full force and effect pursuant to Section 2.8 of these By-laws.

### ***Section 2.13 Membership Book***

The name and address of each Member shall be contained in a Membership book (the "Membership Book") to be maintained at the principal office of the Consortium. Termination of any Membership shall be recorded in the book together with the date of such termination. Each Member shall be responsible for apprising the Consortium in writing of all changes to its name and address, and of the names and addresses of all representatives of such Member appointed to

be members of Member Committee designated by such Member in its application for Membership or to receive notices or to vote on behalf of such Member.

### **Section 2.14 Levy of Dues, Assessments or Fees**

(a) The Consortium may levy dues, assessments or fees upon its Members in such amount as may be approved from time to time by the Board of Directors with a Super Majority Vote, but a Member upon learning of any increase in dues, or of any levy of any assessments or fees, may avoid liability therefor by resigning from Membership pursuant to Section 2.12 above prior to the date such dues, assessments or fees are due and payable, except where the Member is, by contract with the Consortium or otherwise, independently and explicitly liable for such dues, assessments or fees. No provision of the Certificate of Incorporation or By-Laws of the Consortium authorizing such dues, assessments or fees shall, of itself, create such liability. In no event shall the failure of a Member to pay any dues or assessments give rise to any claim in favor of the Consortium for indirect or consequential damages.

(b) Subject to the approval of the Board of Directors with Super Majority Vote, the Consortium may exchange Memberships with other consortia, trade associations and similar non-profit organizations on a no-fee or reduced-fee basis, where it is believed that such cross membership is in the best interests of the Consortium and its Members.

### **Section 2.15 Use of Names**

Neither the Consortium nor any Member shall use the name of the other in any form of publicity without the written permission of the other, provided that the Consortium and any Member may each disclose and publicize such Member's Membership in the Consortium. Notwithstanding the foregoing, if the Consortium has not made a filing under the National Cooperative Research and Production Act of 1993, as amended, a Member may request that its Membership not be disclosed if it makes a written request to such effect at the time of application to the Consortium for Membership.

### **Section 2.16 Membership Level Changes**

Subject to the eligibility and other criteria set forth in Section 2.2 above and except as provided below in the case of Related Companies, any Member in good standing may upgrade its Membership class to any class other than Sponsor member at any time by (a) delivering written notice of such election to the Consortium, (b) acceptance of such election by the Consortium (which acceptance shall be administered in a non-discriminatory fashion) and (c) payment of an upgrade fee equal to the remainder of the then applicable Annual Membership Fees for such Member's new Membership class minus all Annual Membership Fees already paid by such Member for the applicable Membership year, prorated to take into account only the portion of the applicable Membership year remaining after the date the Consortium accepts such Member's upgrade election. Any Member may downgrade its Membership class at any time by delivering written notice of such election to the Consortium, provided, however, that a downgrade in Membership class shall not entitle a Member to any refund of any Annual Membership Fees

already paid, and all other fees of such Member which may be accrued and unpaid as of the date of such downgrade shall remain due and payable.

Notwithstanding the above, if a Member wishes to upgrade its Membership to become a Voting Member and it has a Related Company that is a Voting Member at such time, then such Related Company must either (i) agree to be demoted to a non-voting Membership, effective upon the date of acceptance of the upgrade, or (ii) resign from its Membership; in either case without refund of any Membership or other fees already paid. In no event shall a Subsidiary have a higher Membership class than a Related Company that is also its direct or indirect parent.

## **ARTICLE III**

### **MEETINGS OF MEMBERS**

#### ***Section 3.1 Place of Meetings***

All meetings of the Members shall physically be held at such place within or without the State of Delaware, or as may otherwise be permitted by law, and at such place as may be fixed from time to time by the Board of Directors or Chairman, or if not so designated, at the registered office of the Consortium.

#### ***Section 3.2 Annual Meeting***

Annual meetings of Members ordinarily shall be held by written consent or by ballot submitted by electronic transmission (each, an "Electronic Ballot") pursuant to Section 3.10. Notwithstanding the foregoing, however, the Board of Directors may call any annual meeting to be held in person and each such meeting, once called, shall take place on the first Monday in February of the applicable year, if not a legal holiday (in the United States), and if such a legal holiday, then on the second secular day following, at 10:00 a.m., or at such other date and time as shall be designated from time to time by the Board of Directors or the Chairman. Pursuant to such written consent, or at such meeting, as applicable, the Voting Members shall transact such business as may properly be addressed by written consent, or at such meeting, as applicable. If no annual meeting is held (and no annual consent has been executed) in accordance with the foregoing provision, the Board of Directors shall cause a meeting to be held as soon thereafter as convenient, which meeting shall be designated a special meeting in lieu of annual meeting.

#### ***Section 3.3 Special Meetings***

Special meetings of the Members, for any purpose or purposes, may, unless otherwise prescribed by statute or by the Certificate of Incorporation, be called by the Board of Directors or the Chairman or Secretary at the request in writing of a majority of the Directors then in office, or at the request in writing of at least ten percent (10%) of the Voting Members eligible to vote at

such meeting. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Upon request by any person or persons entitled to call a special meeting of the Members, the Chairman, Vice Chairman (if any) or Secretary shall, within thirty days after receipt of the request, cause notice to be given to each Member entitled to attend such meeting that a special meeting will be held at a time chosen by the Board of Directors, but not less than thirty-five nor more than ninety days after receipt of the request.

### **Section 3.4 Notice of Meetings**

Except as otherwise provided by law or these By-laws, written notice of each meeting of the Members, annual or special, stating the place, date and hour of the meeting, and, in the case of a special meeting, the general agenda and the purpose or purposes for which the meeting is called, and such other information as may be required by law shall be given not less than ten nor more than sixty days before the date of the meeting, to each Member entitled to attend such meeting.

### **Section 3.5 Voting List**

The Officer who has charge of the Membership Book of the Consortium shall prepare and make a complete list of the Voting Members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each such Voting Member. Nothing contained in this Section shall require the Consortium to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any Member, for any purpose germane to the meeting, for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Consortium. In the event that the Consortium determines to make the list available on an electronic network, the Consortium may take reasonable steps to ensure that such information is available only to Members of the Consortium. The list shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any Member who is present.

### **Section 3.6 Quorum**

Except as otherwise provided by statute, the Certificate of Incorporation or these By-laws, fifty percent (50%) or more of the Voting Members entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business by the Voting Members at all meetings of the Members; provided, however, that in the case of any action which, by provision of these By-laws, would require the vote of a single class of the Voting Members, fifty percent (50%) or more of the Voting Members of such class entitled to vote, present in person or represented by proxy, shall constitute a quorum for the transaction of business by such class of the Voting Members at all meetings of the Members. Member

Committees and Sub-Groups shall have the same rules relating to quorum requirements and voting majorities as provided for in these By-laws, unless otherwise approved by the affirmative vote of the Board of Directors.

### **Section 3.7     *Adjournments***

Any meeting of Members may be adjourned from time to time to any other time and to any other place at which a meeting of Members may be held under these By-laws or by law, which time and place and such other information as may be required by law shall be announced at the meeting, by a majority of the Voting Members present in person or represented by proxy at the meeting and entitled to vote, though less than a quorum, or, if no Voting Member is present or represented by proxy, by any Officer entitled to preside at or to act as Secretary of such meeting, without notice other than announcement at the meeting, until a quorum shall be present or represented. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each Member.

### **Section 3.8     *Action at Meetings***

(a) Unless the question is one upon which, by express provision of law, the Certificate of Incorporation or these By-laws, a different vote is required (in which case such express provision shall govern and control the decision of such question), when a quorum is present at any meeting of the Members, the affirmative vote of more than fifty percent (50%) of all votes cast (disregarding abstentions) by Voting Members, present in person or represented by proxy at such meeting and entitled to vote on the question, shall be the act of the Voting Members; provided, however, in the event that any vote is to be taken of a single class of Voting Members, when a quorum of such class of Voting Members is present at any meeting of the Members, the affirmative vote of more than fifty percent (50%) of all votes cast (disregarding abstentions) by such class of Voting Members, present in person or represented by proxy at such meeting and entitled to vote on the question, shall be the act of such class of Members; and provided further, that for any action which, by provision of these By-laws, would require a Super Majority Vote or Strong Super Majority Vote of the Board of Directors, the same higher percentage of Voting Members as would be required for the Board of Directors to approve such action shall also be required for the Voting Members to approve such action, regardless of whether quorum is present.

(b) Matters to be submitted to a vote of the Voting Members regarding governance of the Consortium as a corporate entity shall, unless otherwise required by these By-laws or the Certificate of Incorporation, be limited solely to matters expressly requiring the approval of members of a non-stock, not for profit corporation in accordance with applicable law. In the event a vote of the Voting Members is to be taken upon the recommendation of the Board of Directors in respect of any (i) merger or consolidation of the Consortium, (ii) dissolution, liquidation or winding up of the Consortium or (iii) sale, lease or exchange of all or substantially

all of the assets and property of the Consortium, then a majority of the Voting Members entitled to vote on the question shall decide such question regardless of Section 3.6 above.

### **Section 3.9 Proxies**

Each Member entitled to vote at a meeting of Members, or to express consent or dissent to corporate action in writing without a meeting, may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

### **Section 3.10 Action Without Meeting or by Electronic Ballot**

(a) Any action required or permitted to be taken at any annual or special meeting of Members, or at any meeting of a Member Committee, Sub-Group or single class of Voting Members, may be taken without prior notice and without a vote, if a consent in writing, setting forth the action so taken, shall be signed by Members (or class of Members, as the case may be) making up not less than that percentage of all Members (or such class of Members, as the case may be) as would be necessary to authorize or take such action at a meeting at which all Members (or class of Members, as the case may be) entitled to vote thereon were present and voted. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those otherwise entitled to vote thereon who have not consented in writing. An electronic transmission consenting to an action to be taken and transmitted by a Member or proxy holder, or by a person or persons authorized to act for a Member or proxy holder, shall be deemed to be written, signed and dated for the purposes of this section, provided that it meets the requirements of Section 3.10(c) below.

(b) Any action required or permitted to be taken at any annual or special meeting of Members, or at any meeting of a Member Committee, Sub-Group or single class of Voting Members, may be taken by Electronic Ballot if (i) Electronic Ballots setting forth the proposed action and meeting the requirements of Section 3.10(c) below are sent to all Members entitled to vote thereon, (ii) Members (or such class of Members, as the case may be) making up not less than that percentage of all Members (or such class of Members, as the case may be) as would be necessary to achieve a quorum at a meeting of such Members (or class of Members, as the case may be) submit Electronic Ballots to the Consortium and (iii) Members (or such class of Members, as the case may be) making up not less than that percentage of all Members (or such class of Members, as the case may be) as would be necessary to authorize or approve such action at a meeting at which a quorum of the Members (or class of Members, as the case may be) were present submit Electronic Ballots to the Consortium affirmatively approving such action.

(c) Any electronic transmission (including Electronic Ballots) must set forth or be delivered with information from which the Consortium can determine (i) that the electronic transmission was transmitted by the Member or proxy holder or by a person or persons authorized to act for the Member or proxy holder and (ii) the date on which such Member or proxy holder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which

such consent or Electronic Ballot was signed or cast (as the case may be). No consent given by electronic transmission or Electronic Ballot shall be deemed to have been delivered until such consent or Electronic Ballot is reproduced in paper form and until such paper form shall be delivered to the Consortium by delivery to its registered office in Delaware, its principal place of business or an Officer or agent of the Consortium having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to the Consortium's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission and Electronic Ballots may be otherwise delivered to the principal place of business of the Consortium or to an Officer or agent of the Consortium having custody of the book in which proceedings of meetings of Members are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Consortium.

(d) Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

### **Section 3.11 Order of Business**

The order of business at all meetings of Members shall be as determined by the presiding Officer, but the order of business to be followed at any meeting at which a quorum is present may be changed by a vote of the Voting Members.

## **ARTICLE IV**

### **DIRECTORS**

#### **Section 4.1 Powers; Voting**

The business and affairs of the Consortium shall be managed by its Board of Directors, which shall be, and shall possess all of the powers of, the "Governing Body" of the Consortium as a not-for-profit membership corporation under Delaware General Corporation Law. The Board of Directors may exercise all powers of the Consortium and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-laws directed or required to be exercised or done by the Members.

#### **Section 4.2 Number of Directors**

Each Sponsor Member shall appoint no more than one Director. Each Director shall be an employee or officer of a Member who appoints such individual as a Director.

### **Section 4.3      *Nomination, Election and Term of Office of Directors***

(a) Each Sponsor Member (while remaining in good standing) shall be entitled individually to nominate and elect one (1) Director ; each Director shall have a term of one (1) year, and thereafter until his or her successor shall be elected and qualified, or until his or her earlier resignation or removal.

(b) Each Director may be appointed for an unlimited number of additional one (1) year terms. Each Director is automatically appointed for such additional one (1) year term at the end of each term, unless the respective Member removes such Director or appoints a different Director. No Member (including its Related Companies) shall be represented by more than one (1) Director.

(c) A Director shall hold office until the earliest to occur of (i) the expiration of the term for which such Director was elected and such Director's successor is elected and qualified, (ii) the Member which is represented by such Director ceases to be a Sponsor Member, (iii) the death, resignation or removal of the Director, (iv) the combination, by merger, acquisition or otherwise, of two Members each of which has a representative on the Board of Directors, upon which event one of the two representatives, as designated by the surviving Member, shall be deemed to have resigned, or (v) the termination of the employment of such Director by the Member represented by such Director. In addition, during such times as a Member is not in good standing, as defined in Section 2.2, the attendance and voting rights of any representative on the Board of Directors representing such Member shall be suspended until such time as the Member regains good standing.

(d) Each Sponsor Member may designate in writing (which designation may be withdrawn in writing at any time by such Member) an alternative individual to act as a Director in the original Director's stead, whether for a single meeting or as a standing alternate. Any such alternate Director shall be entitled to (i) attend and vote at all meetings which the original Director does not attend, (ii) sign all written consents in lieu of the original Director, and (iii) otherwise exercise the duties and enjoy the privileges of the original Director in the absence or unavailability of the original Director. In addition, in lieu of making such a substitution, any Director who will be absent for any meeting may deliver a written proxy to the Chairman or any other Director present at that meeting (the "Proxy Holder"), authorizing the Proxy Holder to vote as instructed in such proxy. Any such proxy shall be valid only with respect to the meeting and such specific matters (or with respect to all matters, if so desired) as may be stated in such proxy.

(e) The Board of Directors may approve from time to time by a Strong Super Majority Vote such reasonable attendance and other requirements as it shall deem to be advisable to ensure that Board seats are held by active, contributing individuals. Unless otherwise so required, a Director's voting rights shall automatically be suspended, if such Director is absent from two (2) consecutive meetings of the Board of Directors and is then absent at the next (third) consecutive meeting. Thereafter, such suspension shall automatically be lifted at such time as such Director next attends a meeting of the Board of Directors, with such voting rights resuming at the commencement of such meeting. For the purpose of determining the reasonable attendance, the presence of an alternate Director or by proxy at a meeting, or active participation in Actions by Consent according to section 4.11, shall constitute presence at the meeting.

#### **Section 4.4    *Enlargement or Reduction***

Subject to Section 2.10 above, the number of Directors, the persons eligible to become Directors, and the classes of Members eligible to elect or appoint Directors may be amended at any time by a Strong Super Majority Vote of the Board of Directors.

#### **Section 4.5    *Resignation and Removal***

Any Director may resign at any time upon notice to the Consortium in writing or by electronic transmission at its principal place of business or to the Chairman or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any Director who was elected by a Member under Section 4.3 may be removed, with or without cause, by that Member. Unless otherwise specified by law or the Certificate of Incorporation, any Director may be removed for material cause by a Super Majority Vote of the other Directors.

#### **Section 4.6    *Vacancies***

(a) Vacancies on the Board of Directors occurring as a result of death, resignation or removal of a Director by the Member who nominated such person or by the Board of Directors in accordance with Section 4.5, may, at the option of such Member, be filled by such Member, and otherwise by a vote of the Board of Directors. All other vacancies shall be filled by the vote of a majority of Directors then in office without prejudice to Sponsor Member's rights to designate a Director under Section 4.3(a), whether or not less than a quorum, or by a sole remaining Director, in each case in accordance with Sections 4.2 and 4.3(a) of these By-laws and such objective criteria as the Board of Directors may determine from time to time as being necessary, appropriate or desirable to ensure a representative and effective Board of Directors. The term of a Director so appointed or elected shall be the unexpired portion of the term of the Director, if any, whom the Director so appointed or elected is replacing, or until the next general election of Directors, in the case of an expansion of the Board of Directors.

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

#### **Section 4.7    *Place of Meetings***

The Board of Directors may hold meetings, both regular and special, either within or without the State of Delaware.

#### **Section 4.8    *Regular Meetings***

The Board of Directors may schedule meetings to occur on a regular basis (each a "Regular Meeting"). Regular Meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board of Directors;

provided that any Director who is absent when such a determination is made shall be given prompt notice of such determination. A Regular Meeting of the Board of Directors may be held without notice immediately after and at the same place as the annual meeting of Members.

#### **Section 4.9 Special Meetings**

Special meetings of the Board of Directors may be called by the Chairman, Secretary, or on the written request of two or more Directors, or by one Director in the event that there is only one Director in office. Two business days' notice to each Director, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, shall be given to each Director by the Secretary or by the Officer or one of the Directors calling the meeting. A notice or waiver of notice or any waiver by electronic transmission of a meeting of the Board of Directors need not specify the purposes of the meeting.

#### **Section 4.10 Quorum, Action at Meeting, Adjournments**

(a) Except where a "Super Majority Vote" or a "Strong Super Majority Vote" is required under these By-laws, at all meetings of the Board of Directors a majority of Directors then in office shall constitute a quorum for the transaction of business and the act of a majority of the Directors present at any meeting, at which there is a quorum, shall be the act of the Board of Directors, except as may be otherwise specifically provided by law or by the Certificate of Incorporation.

(b) In order to pass a Super Majority Vote, a resolution must either (x) be taken at a meeting of the Board of Directors at which two-thirds (2/3s) of the Directors then in office, excluding any Director whose voting rights have been suspended according to Section 4.3(e), are in support of such resolution and have voted affirmatively, or (y) have been approved in the manner described in Section 4.11 below by the consent or Electronic Ballot of an equivalent number of Directors. A Super Majority Vote shall be required with respect to the following matters:

- (i) Adopting, amending, publishing and/or withdrawal of Specifications and Other Solutions;
- (ii) Deprivation or suspension of Membership of any Member of the Consortium;
- (iii) Removal or suspension of any Director (other than a suspension by application of Section 4.3(e) );
- (iv) Adopting or amending any policy or process documents not involving Intellectual Property or the ownership or licensing thereof;
- (v) Approval of substantive budgeting matters, including without limitation, the setting of annual dues (the Board of Directors may delegate the more precise details of budgeting);
- (vi) Establishment of new Member Committees, Sub-Groups or Board Committees;
- (vii) Setting limitations on the amount of voting and non-voting members of each Member Committee and Sub-Group; and

(viii) Election of Officers.

(c) In order to pass a Strong Super Majority Vote, a resolution must either (x) be taken at a meeting of the Board of Directors at which a “Required Number” of Directors then in office, excluding any Director whose voting rights have been suspended according to Section 4.3(e), are in support of such resolution and have voted affirmatively, or (y) have been approved in the manner contemplated by Section 4.11 below by the consent or Electronic Ballot of an equivalent number of Directors. For purposes of this Section 4.10(c), a “Required Number” of votes means a unanimous vote of the Directors, where four or fewer Directors are then in office, and, when there are five or more Directors then in office, 80% (rounded up to the nearest whole number of votes) of all Directors then in office. A Strong Super Majority Vote shall be required with respect to the following matters:

- (i) Amending or repealing these By-laws or adopting new By-laws;
- (ii) Amending the Certificate of Incorporation;
- (iii) Adopting or recommending to the Members an agreement of merger or consolidation;
- (iv) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of the Consortium’s property and assets;
- (v) Approving or recommending to the Members the dissolution, liquidation or winding up of the Consortium or a revocation of any such dissolution, liquidation or winding up;
- (vi) Adopting or amending the IPR Policy or the Rules of Procedure;
- (vii) Adopting or amending such attendance and other requirements as set forth in Section 4.3(e);
- (viii) Adopting or amending Membership Application or other agreements between Members and the Consortium;
- (ix) Making any financial commitments exceeding the amount provided for in the then current budget of the Consortium;
- (x) Adopting new trademarks or logos for the Consortium;
- (xi) Approval of new Sponsor Members; and
- (xii) Passing resolutions under Section 2.9 (e) hereof.

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

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

#### **Section 4.11 Action by Consent**

(a) Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken by the Board of Directors may be taken without a meeting and without prior notice if a majority of Directors then in office (or such greater number of Directors as may be required by law or these By-laws for the taking of any such action at a meeting) consent thereto in writing or by electronic transmission (including without limitation, by Electronic Ballot), and the writing or writings, or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors, provided that:

- (i) such action in question shall have been sent simultaneously to all Directors then in office for their consideration;
- (ii) prompt written notice of any action so taken is given to those Directors who have not consented in writing or by electronic transmission; and
- (iii) two or more Directors have not objected to the taking of any such action by written notice delivered to the Consortium within ten (10) business days following the date that written notice of the action is delivered to such Directors.

Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

(b) Notwithstanding the foregoing, the ability of two or more non-consenting Directors to prevent the taking of an action by written consent under clause 4.11(a)(iii) above shall not prevent any such action from being taken at a later date at an actual meeting of the Board of Directors.

(c) Notwithstanding the foregoing, unless otherwise restricted by the Certificate of Incorporation or these By-Laws, in the event a request is distributed by electronic transmission (including without limitation, by Electronic Ballot) or otherwise to the Directors then in office requesting their consent to a proposed action that is required or permitted to be taken by the Board of Directors (each an "Initial Request"), and if after fourteen (14) days from the date of the Initial Request, a majority of the Directors then in office (or such greater number of Directors as may be required by law or these By-laws for the taking of any such action at a meeting) who have responded to such request by electronic transmission (or otherwise) have consented to the taking of such action and the electronic transmission or transmissions (or other form of written consent) are filed with the minutes of proceedings of the Board of Directors, such action shall be deemed to have been duly taken without a meeting, without additional notice (except as provided for below) and without waiting for additional responses from any Directors who have not yet responded (each an "Unresponsive Director"), provided that:

- (i) on the fifth business day (in the United States) after distributing the Initial Request, the Consortium shall have distributed to each Unresponsive Director as of that date a reminder by electronic mail containing the text of the Initial Request (the "Second Request");
- (ii) on the eighth business day (in the United States) after distributing the Initial Request, the Consortium distributes to each Unresponsive Director as of that date a second reminder by electronic mail containing the text of the Initial

- Request (the “Third Request”, and each Initial Request, Second Request and Third Request, a “Request”);
- (iii) in addition to sending each Request to each Director, the Consortium shall have simultaneously distributed a copy of each Request to each Unresponsive Director at up to two additional electronic mail addresses as may have been provided by such Unresponsive Director to the Consortium for such purpose from time to time; and
  - (iv) at such point as a majority of Directors then in office (or such greater number of Directors as may be required by law or these By-laws for the taking of any such action at a meeting) has consented to the taking of such action and the electronic transmission or transmissions (or other form of written consent) are filed with the minutes of proceedings of the Board of Directors, such action shall be deemed to have been duly taken, regardless of whether the same occurs prior to the passage of a full fourteen (14) days from the date of Initial Request.

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

#### ***Section 4.12 Telephonic Meetings***

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

#### ***Section 4.13 Inspection Rights***

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

#### ***Section 4.14 Fees and Compensation***

Directors shall not receive any stated salary or reimbursements for their services as Directors; provided that, by resolution of a majority of the Board of Directors as set forth in Section 4.10(a), the Consortium may reimburse Directors for expenses incurred while acting on behalf of the Consortium and/or expenses incurred in attending meetings of the Board of Directors, in such amounts as the Board of Directors may determine to be appropriate. Nothing herein contained shall be construed to preclude any Director from serving the Consortium in any other capacity as an Officer, agent, employee, or otherwise, and receiving compensation therefor. The Directors may also provide reimbursement of expenses for members of Board Committees

or Member Committees in connection with their service on such Board Committees, Member Committees or Sub-Groups.

#### **Section 4.15 Notification of Pending Legal Actions**

Directors must notify at their earliest convenience the full Board of Directors of the Consortium of any legal actions being taken against the Consortium immediately upon being informed of the existence of any such action.

## **ARTICLE V**

### **BOARD COMMITTEES AND OTHER COMMITTEES**

#### **Section 5.1 Board Committees**

The Board of Directors may (but shall not be required), by resolution adopted by a Super Majority Vote of the Directors then in office, create one or more Board Committees, each consisting of one or more Directors (each “Board Committee” and collectively “Board Committees”). The Board of Directors may designate one or more Directors as alternate members of such Board Committees, who may replace any absent member at any meeting of such Board Committees. Each Board Committee, subject to any limitations imposed by the Certificate of Incorporation, by these By-laws, by statute, and/or by the Board of Directors, shall have and may exercise all of the powers of the Board of Directors which are delegated to such Board Committee from time to time by the Board of Directors; provided, however, that any Board Committee shall have no authority with respect to:

- (a) Approval, adoption or recommendation to Members of any action which also requires approval of the Voting Members;
- (b) Adoption of any resolution or approval of any action, which requires a Super Majority Vote or a Strong Super Majority Vote under these By-Laws;
- (c) Filling of any vacancy on the Board of Directors;
- (d) Fixing compensation of the Directors for serving on the Board of Directors or on any Board Committee; and
- (e) Amending or repealing any resolution of the Board of Directors which, by its express terms, is not so amendable or repealable, or which relates to matters with respect to which a Board Committee would otherwise have no authority in accordance with this Section 5.1.

Any Board Committee or Board Committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors. Each Board

Committee shall keep regular minutes of its meetings and make such reports to the Board of Directors as the Board of Directors may request.

### **Section 5.2 Meetings of Board Committees**

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

### **Section 5.3 Term of Office of Members of Board Committees**

Each member of a Board Committee shall serve at the pleasure of the Board of Directors.

### **Section 5.4 Member Committees**

(a) From time to time, the Board of Directors may establish by a Super Majority Vote Member Committees, including but not limited to the Technical Committee, the Marketing Committee and the Compliance Committee (each Technical Committee, Marketing Committee, Compliance Committee and other Member Committee is hereinafter referred to as a “Member Committee”) and Working Groups, sub-committees, and other working groups and special interest groups thereof (each a “Sub-Group”), provided, however, that prior to establishing any Member Committee or Sub-Group:

- (i) the Board of Directors shall hold a meeting to discuss the proposed scope of such new Member Committee or Sub-Group;
- (ii) thereafter, the Board of Directors shall deliver a notice to each Member (a) requesting comments on the proposed scope of such Member Committee or Sub-Group, (b) for notices regarding the Technical Committee or any Sub-Group thereof, requesting that such Member identify any Intellectual Property owned by it and/or its Related Party(ies) which might Necessarily Infringe (as defined in IPR Policy) the Specifications and Other Solutions to be created by such Member Committee or Sub-Group and which such Member is not willing to license on such terms as set forth in the IPR Policy and Rules of Procedure as of that time and (c) setting forth a date by which all Members must have submitted their responses in order for such responses to be considered by the Consortium (the “Response Date”), which Response Date must be no less than six (6) weeks after the date of such notice for comments regarding the Technical Committee or any Sub-Group thereof; and
- (iii) the Board of Directors shall hold a second meeting on or after the Response Date to assess the Members’ responses and to define the final scope of such Member Committee or Sub-Group, and to decide on the requisites and limitations (if any)

for the participation of Members of the different Membership classes to such Member Committee or Sub-Group.

Each Member, so long as it remains a Member in good standing, shall (except as set forth in these By-laws) be entitled to appoint or apply for a representative or representatives to each Member Committee and to its Sub-Groups, as set forth in Sections 2.3(c), 2.4(d), 2.5(a), 2.6 and 2.7(a), with such representative(s) to have the voting rights (if any) set forth in Article II. The members of neither any Member Committee nor its Sub-Groups need be Directors. Any Member Committee or Member Committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

(b) A Technical Committee of the Consortium shall be established. The Technical Committee and its Sub-Groups shall be the primary Member-level forum for the discussion and preliminary adoption of Specifications and Other Solutions, subject to the review, and within the strategic direction established, by the Board of Directors, and such Member Committee shall otherwise have such rights and privileges, and shall have such number of voting and non-voting members, as shall from time to time be established by the Board of Directors. The Technical Committee may make technical recommendations to the Board of Directors concerning Specifications and Other Solutions and testing thereof, may coordinate and implement the same, and may undertake such other tasks as may from time to time be established by the Board of Directors, provided that all Specifications and Other Solutions may only be finally adopted by the Board of Directors.

(c) A Marketing Committee of the Consortium may be established at such time as deemed advisable by the Board of Directors. The Marketing Committee and its Sub-Groups shall be the primary Member-level forum for the discussion of activities intended to promote the mission of the Consortium generally in the industry, subject to the review, and within the strategic direction established, by the Board of Directors, and such Member Committee shall otherwise have such rights and privileges, and shall have such number of voting and non-voting members, as shall from time to time be established by the Board of Directors. The Marketing Committee may make recommendations to the Board of Directors concerning promotional matters relating to Specifications and Other Solutions adopted by the Consortium, may coordinate and implement the same, and may undertake such other tasks as may from time to time be permitted by the Board of Directors.

(d) A Compliance Committee of the Consortium may be established at such time as deemed advisable by the Board of Directors. The Compliance Committee and its Sub-Groups shall be the primary Member-level forum for the discussion of activities relating to the establishment and maintenance of a compliance and certification program, subject to the review, and within the strategic direction established, by the Board of Directors, and such Member Committee shall otherwise have such rights and privileges, and shall have such number of voting and non-voting members, as shall from time to time be established by the Board of Directors. The Compliance Committee may make recommendations to the Board of Directors concerning compliance and certification matters, may coordinate and implement the same, and may undertake such other tasks as may from time to time be permitted by the Board of Directors.

(e) Except as otherwise provided by the Board of Directors, each Member Committee, Working Groups and Sub-Group may adopt its own rules governing the time and place of holding and the method of calling its meetings and the conduct of its proceedings and shall meet as provided by such rules, but unless otherwise provided by resolution of the Board of Directors, its business shall be conducted as nearly as possible in the same manner as is provided in these By-laws for the conduct of the business by the Voting Members.

## **ARTICLE VI**

### **OFFICERS**

#### **Section 6.1 Officers**

The Officers of the Consortium shall be a Chairman, a Treasurer and a Secretary. The Consortium may also have, at the discretion of the Board of Directors, an Executive Director, a President, one or more Vice Chairmen, one or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers with such titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3. When the Consortium has a Chairman (and otherwise, the President), that individual shall preside over meetings of the Board of Directors. One person may hold two or more offices unless the Certificate of Incorporation or these By-laws otherwise provide; provided, however, that the Chairman may not serve as either the Treasurer or the Secretary. Each Officer shall be an employee or officer of a Sponsor Member (except that the Assistant Secretary and Executive Director (if any) need not be such an employee or officer), provided that in the event that any Officer shall cease to be such an employee or officer (either because such Member has ceased to be a Sponsor Member, or because such Officer has ceased to be an employee or officer of such a Member) before the appointed term of such Officer has expired, then he or she may, with the consent of the Consortium, continue to be an Officer for a period of up to 60 days. If, by the end of such period, such Officer has become an employee or officer of a Sponsor Member again, then he or she may continue as an Officer. Otherwise, his or her term shall be deemed to have expired as of the end of such sixty (60) day period, or as of the date of any earlier request by the Consortium.

#### **Section 6.2 Vacancies**

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-laws for regular elections to such office.

#### **Section 6.3 Election**

The Board of Directors at its first meeting after each annual meeting of Members shall choose a Chairman, President (if desired), a Secretary and a Treasurer by Super Majority Vote.

Other Officers may be elected by the Board of Directors with a Super Majority Vote at such meeting, or at any other meeting or by written consent, and all Officers may be replaced, at any other meeting, or by written consent.

#### **Section 6.4     *Tenure***

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

#### **Section 6.5     *Chairman***

The Chairman shall preside at all meetings of the Board of Directors and the Members. The Chairman shall oversee the management of the business of the Consortium and see that all orders and resolutions of the Board of Directors are carried into effect. Without limiting the foregoing, the Chairman shall:

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

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

#### **Section 6.6     *Executive Director***

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

#### **Section 6.6     *Vice-Chairmen***

In the absence of the Chairman or in the event of his or her inability or refusal to act, a Vice-Chairman, or if there be more than one Vice-Chairman, the Vice-Chairmen in the order designated by the Board of Directors (or in the absence of any designation, then in the order determined by their tenure in office) shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The

Vice-Chairmen shall perform such other duties and have such other powers as the Board of Directors or the Chairman may from time to time prescribe.

### **Section 6.7 Secretary**

The Secretary shall have such powers and perform such duties as are incident to the office of Secretary, and shall:

- (a) Prepare and maintain lists of Members and their addresses as required;
- (b) Attend all meetings of the Board of Directors and all meetings of the Members and record all the proceedings of the meetings of the Consortium and of the Board of Directors in a book to be kept for that purpose and perform like duties for the standing Board Committees, Member Committees and Sub-Groups when required;
- (c) Give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and perform such other duties as may be from time to time prescribed by the Board of Directors, and be under their supervision; and
- (d) Have custody of the corporate seal of the Consortium and the Secretary, or an Assistant Secretary, have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other Officer to affix the seal of the Consortium and to attest the affixing by such Officer's signature.

### **Section 6.8 Assistant Secretaries**

The Assistant Secretary, or if there be more than one, the Assistant Secretaries in the order determined by the Board of Directors, the Chairman or the Secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chairman or the Secretary may from time to time prescribe. In the absence of the Secretary or any Assistant Secretary at any meeting of Members or Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

### **Section 6.9 Treasurer**

The Treasurer shall perform such duties and shall have such powers as may be assigned to him or her by the Board of Directors or the Chairman. In addition, the Treasurer shall perform such duties and have such powers as are incident to the office of Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Consortium and shall deposit all moneys and other valuable effects in the name and to the credit of the Consortium in such depositories as may be designated by the Board of Directors, taking proper vouchers for such disbursements,

and shall render to the Chairman and the Board of Directors, when the Chairman or Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Consortium.

### **Section 6.10 Compensation**

The compensation, if any, of the Officers shall be fixed from time to time by the Board of Directors, and no Officer shall be prevented from receiving such compensation by reason of the fact that the Officer is also a Director of the Consortium.

## **ARTICLE VII**

### **NOTICES**

#### **Section 7.1 Delivery**

(a) Unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, and subject to the provisions below relating to notice by electronic transmission to Members, written notice may be given by electronic mail, telecopy, commercial delivery service, or similar means, addressed to such Director or Member at his, her or its address for such form of delivery as it appears on the records of the Consortium. Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by the Consortium under any provision of law, the Certificate of Incorporation, or these By-laws, unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, shall be effective if given by a form of electronic transmission consented to by the Member to whom the notice is given. Any consent by a Member to receive notice by electronic transmission shall be revocable by that Member by written notice to the Consortium. Any such consent shall be deemed revoked if (1) the Consortium is unable to deliver by electronic transmission two consecutive notices given by the Consortium in accordance with such consent and (2) such inability becomes known to the Secretary or an Assistant Secretary of the Consortium or to the transfer agent, or other person responsible for the giving of notice; provided, however, the inadvertent failure to treat such inability as a revocation shall not invalidate any meeting or other action. Whenever, under the provisions of law, or of the Certificate of Incorporation or these By-laws, written notice is required to be given to any Director or Member, such notice may be given by mail, addressed to such Director or Member, at his, her or its address as it appears on the records of the Consortium, with postage thereon prepaid.

(b) Notice given pursuant to this section shall be deemed given: (1) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Director, when directed to the number for such Director as it appears on the records of the Consortium; (2) if by electronic mail to (A) a Member, when

directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Director, when directed to the electronic mail address for such Director as it appears on the records of the Consortium; (3) if by a posting on an electronic network together with separate notice to the Member or Director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the Member or Director; (5) if by in-hand delivery or oral notice, at the time it is actually given; and (6) if by commercial delivery carrier or similar means, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by the Consortium or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Consortium that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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

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

### ***Section 7.2 Waiver of Notice***

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

## **ARTICLE VIII**

### **INDEMNIFICATION**

#### ***Section 8.1 Actions other than by or in the Right of the Consortium***

The Consortium shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Consortium) by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Consortium, or is or was serving at the request of the Consortium as a director, officer,

employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Consortium, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Consortium, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

### ***Section 8.2      Actions by or in the Right of the Consortium***

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

### ***Section 8.3      Success on the Merits***

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

### ***Section 8.4      Specific Authorization***

Any indemnification under Section 8.1 or 8.2 of this Article VIII (unless ordered by a court) shall be made by the Consortium only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said

Sections. Such determination shall be made (1) by a majority vote of such Directors who were not parties to such action, suit or proceeding, even though less than a quorum, or (2) by the Members of the Consortium.

### **Section 8.5     *Advance Payment***

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

### **Section 8.6     *Non-Exclusivity***

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

### **Section 8.7     *Jurisdiction of Delaware Court of Chancery***

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

### **Section 8.8     *Insurance***

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

### **Section 8.9     *Continuation of Indemnification and Advancement of Expenses***

The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall continue as to a person who has ceased to be a Director, Officer, employee or agent of the Consortium and shall inure to the benefit of the heirs, executors and administrators of such a person.

### **Section 8.10 Severability**

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

### **Section 8.11 Intent of Article**

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

## **ARTICLE IX**

### **BOOKS AND RECORDS**

#### **Section 9.1 Books and Records**

The Consortium shall keep adequate and correct books and records of account, minutes of the proceedings of the Members, the Board of Directors and Board Committees, and a record of the Members giving their names and addresses and the class of Membership held by each.

#### **Section 9.2 Form of Records**

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

#### **Section 9.3 Reports to Directors, Members and Others**

The Board of Directors shall cause such reports to be prepared, filed and/or distributed as may be required.

#### **Section 9.4 Record Date**

In order that the Consortium may determine the Members entitled to notice of or Voting Members entitled to vote at any meeting of Members or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any distribution, if any, permitted by law and the Consortium's then current federal and state tax

status, or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Membership or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty days nor fewer than ten days before the date of such meeting, nor prior to the adoption of the resolution by the Board of Directors fixing such record date. A determination of Members of record entitled to notice of or Voting Members entitled to vote at a meeting of Members shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining Members entitled to notice of or Voting Members entitled to vote at a meeting of Members shall be at the close of business on the day before the day on which notice is given or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining Members entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is delivered to the Consortium. The record date for determining Members entitled to express consent to corporate action in writing without a meeting, when prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

### ***Section 9.5 Registered Members***

The Consortium shall be entitled to recognize the exclusive right of a person registered on its books as a Member or a representative of a Member to receive distributions, if any, and to vote, if such records indicate that such person is a Voting Member or a representative of a Voting Member, and to hold liable for fees, penalties and assessments a person or entity registered on its books as a Member, and shall not be bound to recognize any equitable or other claim to or interest in Membership on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware General Corporation Law.

## **ARTICLE X**

### **CERTAIN TRANSACTIONS**

#### ***Section 10.1 Transactions with Interested Parties***

No contract or transaction between the Consortium and one or more of its Directors or Officers, or between the Consortium and any other corporation, partnership, association, or other organization in which one or more of its Directors or Officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the Director or Officer is present at or participates in the meeting of the Board of Directors or Board

Committee which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

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

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

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

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

## **ARTICLE XI**

### **GRANTS, CONTRACTS, LOANS, ETC.**

#### ***Section 11.1 Grants***

The making of grants and contributions, and otherwise rendering financial assistance for the purposes of the Consortium, may be authorized by the Board of Directors. The Board of Directors may authorize any Officer or Officers, agent or agents, in the name of and on behalf of the Consortium to make any such grants, contributions or assistance.

#### ***Section 11.2 Execution of Contracts***

The Board of Directors may authorize any Officer, employee or agent of the Consortium, in the name and on behalf of the Consortium, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited.

#### ***Section 11.3 Checks, Drafts, Etc.***

All checks, drafts and other orders for the payment of money out of the funds of the Consortium, and all notes or other evidences of indebtedness of the Consortium, shall be signed

on behalf of the Consortium in such manner as shall from time to time be determined by resolution of the Board of Directors.

#### ***Section 11.4 Deposits***

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

## **ARTICLE XII**

### **GENERAL PROVISIONS**

#### ***Section 12.1 Fiscal Year***

The fiscal year of the Consortium shall be determined, and may be changed, by resolution of the Board of Directors.

#### ***Section 12.2 Reserves***

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

#### ***Section 12.3 Seal***

The Board of Directors may, by resolution, adopt a corporate seal. The corporate seal shall have inscribed thereon the name of the Consortium, the year of its organization and the word "Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise made visible. The seal may be altered from time to time by the Board of Directors.

#### ***Section 12.4 Proprietary Rights***

(a) Except as specifically provided to the contrary in such policies and procedures as may from time to time be approved by the Board of Directors, all information disclosed by any participant during any official meeting or activity of the Consortium, including but not limited to Member meetings, Member Committee meetings, Sub-Group meetings, Board meetings, Board Committee meetings, electronic mail or the like, shall be deemed to have been disclosed on a

non-confidential basis, but without waiver of any rights represented by valid patents, patent applications, and Federal and international statutory copyrights.

(b) No express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other Intellectual Property right of any Member is or shall be deemed to be granted to the Consortium or to any other Member or non Member by reason of its Membership in or participation in the activities of the Consortium, except as may be provided in the IPR Policy, Rules of Procedure or a separate written agreement executed by such Member.

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

## **ARTICLE XIII**

### **ANTITRUST COMPLIANCE**

#### ***Section 13.1 General***

The Consortium will conduct all of its activities in conformance with all international, U.S. federal and state antitrust laws, including the Sherman Act, the Clayton Act, the Robinson-Patman Act and the Federal Trade Commission Act. The Board of Directors and the Chairman shall consult legal counsel and seek legal review whenever necessary to insure that the activities of the Consortium are conducted in conformance with such laws.

#### ***Section 13.2 Availability of Intellectual Property***

It is the good faith objective of the Consortium to make each completed and adopted Specifications and Other Solutions available on the same terms to all Members (including those who have not participated in the development of the same) and non-Members at the same point in time and on the same reasonable and non-discriminatory terms and conditions.

#### ***Section 13.3 No Obligation to Endorse***

No Member (including its Related Party(ies)) shall, by sole reason of its Membership or participation in the Consortium, be obligated to license, use or endorse any Intellectual Property developed or endorsed by the Consortium, or to conform any of its products to any standards or Specifications and Other Solutions developed or adopted by the Consortium, nor shall any such Member (including its Related Party(ies)) be precluded from independently licensing, using or endorsing similar Intellectual Property, software, Specifications and Other Solutions or documentation developed by it or by others.

## **ARTICLE XIV**

### **TRADEMARK, NAME AND LOGO USAGE**

The Consortium's policy regarding the use of its trademarks, name and logos is as follows:

- Unless otherwise approved by a Strong Super Majority Vote of the Directors, permission to use the Consortium logo, solely to identify a company's Membership in the Consortium, is automatically granted to each Member, but only as stipulated on the most recent Membership Privileges document, and only during the period of time for which each company's Membership has not been deprived or suspended pursuant to Section 2.11 and has not been resigned pursuant to Section 2.12. Neither Members nor non-members may use the Consortium Logo to identify their own product or service offerings or to assert endorsement of any product or service offering by the Consortium.
- The Consortium logo shall be printed in black or in color as illustrated on the Logo Page that is available from the Consortium. The aspect ratio of the logo shall be maintained, but the size may be varied. Nothing may be added to or deleted from the logo.
- Since the Consortium name is a trademark of the Consortium, the following statement shall be included in all published literature, advertising material, and product packaging in which the name or logo appears:  
"NFC Forum and the NFC Forum logo are trademarks or service marks of the Near Field Communication Forum in the United States and in other countries."

## **ARTICLE XV**

### **AMENDMENTS**

These By-laws may be altered, amended or repealed or new By-laws may be adopted by an affirmative (i) Strong Super Majority Vote of the Board of Directors, or (ii) vote of not less than 90% of the Voting Members then in good standing, except where such power is expressly limited by law or the Certificate of Incorporation. Any such amendment may be approved at any annual meeting of the Members or Regular Meeting of the Board of Directors or at any special meeting of the Members or of the Board of Directors, provided, however, that in the case of a regular or special meeting of Members, notice of such alteration, amendment, repeal or adoption of new By-laws shall be contained in the notice of such meeting.