

10/1/2018

**BYLAWS OF**  
**OPEN CONNECTIVITY FOUNDATION, INC.**  
(A Delaware Nonprofit Corporation)

## ARTICLE 1. DEFINITIONS

**SECTION 1.1** “Affiliate” or “Affiliates” means any entity that is controlled by, under common control with, or that controls the subject party. For purposes of this definition “control” means direct or indirect control of more than fifty percent (50%) of the voting power to elect directors of a corporation or, for any other entity, the power to direct management of such entity.

**SECTION 1.2** “Basic Member” means all Members of the Corporation who so qualify in accordance with the provisions of Article 12 and Section 14.5 below.

**SECTION 1.3** “Confidential Information” means all information of the Corporation or information submitted by Members to the Corporation unless otherwise specified by the Board of Directors, including: (i) Draft Specifications or source code; (ii) Final Specifications or source code (subject to public release via action of the Board of Directors); (iii) meeting minutes of any Work Group, Task Group, Steering Committee and Board of Directors; (iv) non-technical information that is not a Specification Contribution (as defined in the Intellectual Property Rights Policy) and that is developed by the Corporation or any Member for the purpose of promoting the Corporation or a Specification, such as the Corporation’s public relations or promotional materials, trade show, Member recruiting or Specification promotion plans, or drafts of any of the foregoing that is distributed by or to Members (via the Corporation’s information distribution infrastructure or otherwise) and identified or designated as confidential; (v) all information disclosed by Members prior to the adoption of these Bylaws directly for the purposes of the Corporation or the formation of the Corporation; (vi) all information disclosed by any Member in the manner specified in *Article 16*; and (vii) all other information that is designated as Confidential Information by the Board of Directors that is distributed to Members (via the Corporation’s information distribution infrastructure or otherwise) by an officer of the Corporation or a chairperson of a Work Group.

**SECTION 1.4** “Corporation” means the Open Connectivity Foundation, Inc. (“OCF”).

**SECTION 1.5** “Diamond Member” means all Members of the Corporation who so qualify in accordance with the provisions of *Article 12* and *Section 14.1* below.

**SECTION 1.6** “Executive Director” means an officer of the Corporation whose duties and responsibilities are set forth in *Section 5.9* below. The Executive Director shall not be a member of the Board of Directors.

**SECTION 1.7** “Gold Member” means all Members of the Corporation who so qualify in accordance with the provisions of *Article 12* and *Section 14.3* below.

**SECTION 1.8** “Individual Member” means all Members of the Corporation who so qualify in accordance with the provisions of *Article 12* and *Section 14.5* below.

**SECTION 1.9** “Intellectual Property Rights Policy” or “IPR Policy” means the Corporation’s Intellectual Property Rights Policy, as adopted by the Corporation, and as may be amended from time to time.

**SECTION 1.10** “Member” or “Members” means a general reference to all Diamond Members, Platinum Members, Gold Members (including Nonprofit Educational Gold Members) Individual Members and Basic Members, or any of them, who have so qualified for such classifications pursuant to the provision of these Bylaws. Member shall not mean a “member” as that term is used in Section 215 of

Title 8 of the General Corporation Law of the State of Delaware. The Corporation shall not be deemed to have “members” for purposes of Delaware state law.

**SECTION 1.11** “**Draft Specification**” and “**Final Specification**” and “**Specification Contribution**” have the respective meanings given them in the IPR Policy.

**SECTION 1.12** “**Nonprofit Educational Gold Member**” means a subset of Gold Members of the Corporation who so qualify in accordance with the provisions of *Article 12* and *Section 14.3.3* below.

**SECTION 1.13** “**Organizational Meeting**” means the organizational meeting held by the Corporation.

**SECTION 1.14** “**Platinum Member**” means all Members of the Corporation who so qualify in accordance with the provisions of *Article 12* and *Section 14.2* below.

## **ARTICLE 2. OFFICES**

### **SECTION 2.1 PRINCIPAL OFFICE**

The principal office of the Corporation shall be located at the physical address specified by the Board of Directors. The Corporation may change its principal office upon notice to the Members.

### **SECTION 2.2 CHANGE OF ADDRESS**

The designation of the Corporation’s principal office may be changed from time to time by the Board of Directors. Such change of address shall be effective upon written notice to all Members.

### **SECTION 2.3 OTHER OFFICES**

The Corporation may also have offices at such other places, within or without its state of incorporation, where it is qualified to do business, as its business and activities may require, and as the Board of Directors may, from time to time, designate.

### **SECTION 2.4 REGISTERED AGENT AND OFFICE**

The Corporation shall continuously maintain in the State of Delaware both:

1. a registered agent, who shall be:
  - a. an individual who resides in the State of Delaware;
  - b. a corporation, a domestic business corporation, domestic limited liability company or domestic professional corporation with an office in the State of Delaware; or
  - c. a foreign corporation, foreign business corporation, foreign limited liability company or foreign professional corporation authorized to transact business in the State of Delaware with an office in the State of Delaware; and
2. a registered office of the Corporation which shall be the residence or office address of the registered agent.

## **ARTICLE 3. PURPOSE AND POWERS**

### **SECTION 3.1 INTERNAL REVENUE CODE SECTION 501(c)(6) PURPOSES**

The Corporation is organized exclusively for one or more of the purposes as specified in Section 501(c)(6) of the Internal Revenue Code of 1986, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(6) of the Internal Revenue Code of 1986.

### **SECTION 3.2 SPECIFIC OBJECTIVES AND PURPOSES**

The Corporation is formed for purposes of defining and promoting a single connectivity framework to enable communications and interoperability in support of the “Internet of Things” across multiple vertical markets, operating systems, platforms, modes of communication, transports and use cases.

### **SECTION 3.3 DURATION**

The duration of the Corporation shall be perpetual, but may be dissolved at any time upon a unanimous vote of all Directors.

### **SECTION 3.4 COMPLIANCE WITH ANTITRUST LAWS**

Each of the Members of the Corporation is committed to fostering competition in the development of new products and services, and the work of the Corporation is intended to promote such competition. Each Member further acknowledges that it may compete with the others in various lines of business and that it is therefore imperative that they and their representatives act in a manner which does not violate any applicable state, federal or international antitrust laws or regulations or applicable orders. Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives participating in the activities of the Corporation regarding the importance of limiting the scope of their discussions to the topics that relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Each Member further acknowledges that it and each other Member is free to develop competing technologies and to license its patent rights to third parties, including without limitation, to enable competing technologies and standards.

## **ARTICLE 4. DIRECTORS**

### **SECTION 4.1 NUMBER**

The number of Directors of the Corporation may vary between a minimum of two (2) and a maximum of the total number of Diamond Members, plus two (2). For purposes of these Bylaws, a Director and its alternate representative (as set forth below) shall be counted as one (1) Director.

The Board of Directors shall consist of a Director appointed by each of the Diamond Members admitted to the Corporation plus, beginning on the second annual meeting of the Members, two additional Directors elected as described in *Section 4.3.3*. Diamond Members will be entitled to appoint a director for so long as such Diamond Member is a Diamond Member of the Corporation.

## SECTION 4.2 POWERS

Subject to the provisions of the General Corporation Law of the State of Delaware and any limitations in the Certificate of Incorporation and these Bylaws, the activities and affairs of this Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

## SECTION 4.3 QUALIFICATION, ALTERNATES AND ELECTION OF DIRECTORS

1. Qualification. Each Director must be an employee of the Member appointing or nominating such individual. No Member may have more than one employee elected or appointed to the Board of Directors (plus alternates as set forth below). For purposes of these Bylaws, a Member and its Affiliates shall be deemed as one (1) Member.
2. Alternates. Each Member with an employee appointed or elected to the Board of Directors may also name an alternate to serve on the Board of Directors, who is bound to the same responsibilities and benefits of a Director. Even if a Director is present, that Director's alternate may also attend and participate in meetings of the Board of Directors, but in a nonvoting capacity. By providing written notice to the Secretary, a Member with an employee appointed or elected to the Board of Directors may at any time replace such Director or his or her designated alternate with another employee of the Member.
3. Notice, Nomination and Election of Platinum Member Directors. Regular elections of Directors from among the nominees of the Platinum Members will occur immediately prior to the second annual meeting of the Members and continuing every other year thereafter.

The Executive Director will provide not less than ninety (90) days prior notice to all Platinum Members in good standing of their right to nominate a representative for election as a Director. Platinum Members may then nominate a single employee for election as a Director by providing written notice of the same to the Executive Director not later than thirty (30) days prior to the annual meeting of the Members.

At such time as all nominees of the Platinum Members are known, the current Board of Directors shall direct the Executive Director to create an official ballot of the candidates. The Executive Director shall then provide each Platinum Member with a written slate containing the names of all final nominees no later than twenty (20) days before the annual meeting of the Members. Voting for the election of Platinum Directors shall be exclusively by confidential written ballot received via email, fax or hard copy at least three (3) days before the annual meeting of the Members. Each Platinum Member may cast one (1) vote for each open Director position eligible to be filled from amongst the candidates listed on the ballot. The candidates receiving the highest number of votes shall be elected, up to the number of available seats.

In the event of a tie between two (2) or more individuals seeking election as a Director under this *Section 4.3.3* (and provided resolving the tie is necessary to determine the final composition of the Board of Directors), then a "run-off" election shall be conducted by the Executive Director between those individuals tied after the initial vote. All Platinum Members may participate in the voting. The candidates receiving the highest number of votes shall be elected, up to the number of remaining seats. For purposes of such a tie-breaking election, notice and voting shall be by electronic mail and shall occur as soon as

reasonably possible after the initial tabulation of votes has been completed, but in any event, before the annual meeting of the Board of Directors is called to order.

#### **SECTION 4.4 TERM OF OFFICE**

A Director appointed by a Diamond Member shall serve until the later of his or her death, resignation or removal from office, when their successors are appointed, when he or she is no longer employed by the Diamond Member that appointed him or her, or when the Diamond Member that appointed him or her ceases to be a Diamond Member. A Director elected from among nominees of the Platinum Members shall serve a term of two (2) years or until the Directors death, resignation or removal from office, when their successors are elected, when he or she is no longer employed by the Platinum Member that nominated or appointed him or her, or when the Platinum Member that nominated or appointed him or her ceases to be a Platinum Member.

#### **SECTION 4.5 DUTIES**

The Board of Directors shall perform any and all duties imposed on them collectively or individually by law, by the Certificate of Incorporation, or by these Bylaws. These duties shall be focused on the day-to-day operation and maintenance of the Corporation, but shall also include:

1. Establishing and chartering the Work Groups and Steering Committees;
2. Considering for approval or rejection the Corporation's annual budget. If the annual budget is not approved at the start of each calendar year, the Corporation shall operate based on the prior yearly budget, to the extent practical, until an annual budget is approved;
3. Establishing annual dues for the various classes of Members and to determining the rights and obligations for each class of Member not otherwise stated in these Bylaws;
4. Establishing or revising membership classes and the rights and privileges of the various classes of Members; and
5. Adopting and modifying the Bylaws and IPR Policy.

#### **SECTION 4.6 COMPENSATION**

Directors shall serve without compensation by the Corporation.

#### **SECTION 4.7 PLACE OF MEETINGS**

Board of Directors' meetings shall be held at places and times as may be agreed to by a majority of the Board of Directors. Meetings may be held in person or by any combination of audio, document or videoconferencing techniques or any other means permitted under Section 211 of the General Corporation Law of the State of Delaware, as that Section may, from time to time, be amended.

#### **SECTION 4.8 ANNUAL MEETING**

An annual meeting of the Board of Directors shall be held as soon as practical following the annual meeting of Members.

#### **SECTION 4.9 REGULAR MEETINGS**

Regular meetings of the Board of Directors may be called by any one third (1/3) of the then current Board of Directors, or, if different, by the persons specifically authorized under the laws of the State of Delaware to call regular meetings of the Board of Directors.

#### **SECTION 4.10 NOTICE OF MEETINGS**

1. Procedure for Notice. Unless otherwise provided by the Certificate of Incorporation, these Bylaws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:
  - a. Annual meetings. The Executive Director of the Corporation shall give at least thirty (30) days' prior notice to each Director.
  - b. Regular meetings. The Executive Director of the Corporation shall give at least seven (7) days' prior notice to each Director.

The primary means for the provision of notice shall be via electronic mail to the Director at the electronic mail address as it appears on the records of the Corporation. Personal notification may also include notification by internationally recognized delivery service, telephone, facsimile, or other electronic means; provided, however, such notification shall be subject to any and all acknowledgment requirements as may be set forth in the General Corporation Law of the State of Delaware.

2. Contents of Notice. The Notice of the Meeting shall include, at a minimum, all information required to be provided pursuant to the General Corporation Law of the State of Delaware.

#### **SECTION 4.11 QUORUM FOR MEETINGS**

A quorum of the Board of Directors shall consist of seventy percent (70%) of the total number of Directors. In the absence of a continued quorum at any meeting of the Board of Directors already in progress, a majority of the Directors present may adjourn the meeting.

#### **SECTION 4.12 BOARD ACTION AND VOTING PERCENTAGES**

Except as otherwise provided in the Certificate of Incorporation, these Bylaws or if provisions of law require a greater or lesser voting percentage or different rules for approval of a matter by the Board of Directors, every act or decision done or made upon a two-thirds (2/3) vote of the Directors present at a meeting duly held at which a quorum is present is the act of the Board of Directors.

In addition to such other special voting thresholds as may be provided for under these Bylaws, the following shall also apply:

Matter to be Voted On	Number of Affirmative Votes Required
(a) Approval, adoption and/or formal release of source code, specifications, publications, tools, metrics, or other formal policy positions of the Corporation.	Two thirds (2/3) vote of all Directors.
(b) Removal of a Director or alternate.	Unanimous consent of disinterested Directors.
(c) Revocation, downgrading of non-Diamond Member or suspension of membership.	Unanimous consent of disinterested Directors.
(d) Revision or modification of membership agreements.	Three quarters (3/4) vote of all Directors.

**SECTION 4.13 CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the President or Vice-President (as defined in *Article 5*). The Secretary of the Corporation shall act as secretary of all meetings of the Board of Directors, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

To the extent permitted by applicable law, a Director’s alternate representative to the Board of Directors may attend a Board of Directors’ meeting and, in addition, vote in place of said absent Director should said Director be unavailable to attend such meetings. Should neither the Director nor the designated alternate be available for said meeting, a Director may designate an alternate representative from the same Member entity to attend a Board of Directors’ meeting and vote in place of said absent Director pursuant to a proxy signed by said Director.

Meetings shall be governed by such procedures as may be approved from time to time by the Board of Directors, insofar as such rules are not inconsistent with or in conflict with the Certificate of Incorporation, these Bylaws, or with provisions of law.

Directors may participate in a regular meeting through use of teleconference, videoconference, or similar communications, so long as all people participating in such meeting can hear one another during such Meeting. Participation in a Meeting pursuant to one of the alternative mechanisms allowed by this paragraph constitutes presence in person at such meeting.

**SECTION 4.14 VACANCIES; RESIGNATIONS**

Vacancies on the Board of Directors shall exist whenever: (1) a Director resigns from the Board of Directors; (2) a Director ceases to be employed by the Member employing the Director at the time of the Director’s appointment or election; (3) the Diamond Member that appointed a Director ceases to be a Diamond Member; (4) the Platinum Member that appointed or nominated a Director ceases to be a Platinum Member; (5) a Director is found to have missed more than three (3) consecutive, regularly noticed meetings without cause and without sending an alternate representative to such meetings in



accordance with these Bylaws; and (6) a Director is removed from office with or without cause, as permitted by and in accordance with the laws of the State of Delaware.

Any Director may resign effective upon giving written notice to the President, the Secretary, Executive Director or the Board of Directors. Upon the occurrence of any of the events contained in clauses (2) – (6) of the immediately preceding paragraph, the affected Director will be deemed to have resigned upon the occurrence of such event without any additional action required on the part of the Director.

If the vacancy is the result of the resignation, termination or removal of a Director appointed by a Diamond Member, then that Diamond Member may appoint another employee as a replacement Director by providing the Executive Director with written notice of the same within thirty (30) days after the effective date of the Director's resignation, termination or removal. If the Diamond Member who has the right under this *Section 4.14* to appoint a replacement Director to the Board of Directors fails to appoint such Director within the prescribed time period, or if the vacancy has occurred because the Diamond Member employing the Director has terminated its membership or ceases to be a Diamond Member, the size of the Board of Directors shall be reduced by one.

If the vacancy is the result of the resignation, termination or removal of an elected Director nominated by a Platinum Member, then that Platinum Member may appoint another employee as a replacement Director by providing the Executive Director with written notice of the same within thirty (30) days after the effective date of the Director's resignation, termination or removal. A person appointed to fill a vacancy caused by the resignation, termination or removal of an elected Director shall hold office until the end of the term of the individual being replaced or until his or her death, resignation or removal from office. If the Platinum Member who has the right under this *Section 4.14* to appoint a replacement Director to the Board of Directors fails to appoint such Director within the prescribed time period, or if the vacancy has occurred because the Platinum Member employing the Director has terminated its membership or ceases to be a Platinum Member, then the Executive Director will conduct a special election consistent with the procedures set forth in *Section 4.3.3* to fill such vacancy (provided that any Director elected in this manner will only serve until the next regularly scheduled election).

In the event that two (2) or more Members with Directors appointed or elected to the Board of Directors combine (through merger, acquisition or otherwise), the resulting Member shall designate which of the Directors is to remain on the Board of Directors and the other Director or Directors shall be removed from the Board of Directors immediately upon the closing of the acquisition or merger. Any Director removed pursuant to this paragraph that was appointed by a Diamond Member will result in the size of the Board of Directors being reduced by one; any Director removed pursuant to this paragraph that was elected from among the nominees put forward by the Platinum Members will result in the Executive Director conducting a special election consistent with the procedures set forth in *Section 4.3.3* to fill such vacancy (provided that any Director elected in this manner will only serve until the next regularly scheduled election).

#### **SECTION 4.15 NONLIABILITY OF DIRECTORS**

To the extent permissible under Delaware and U.S. Federal law, Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

#### **SECTION 4.16 INDEMNIFICATION BY THE CORPORATION OF DIRECTORS AND OFFICERS**

To the fullest extent permitted by the General Corporation Law of the State of Delaware, as it exists on the date hereof or is hereafter amended, the Corporation shall indemnify and defend any person who is

made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative, or otherwise (including an action, suit or proceeding by or in the right of the Corporation), by reason of the fact that the person is or was a Director of the Corporation and acting on behalf of the Corporation.

This *Section 4.16* shall not be deemed exclusive of any other provisions or insurance for the indemnification of Directors, officers, employees, or agents that may be included in any statute, bylaw, agreement, resolution of Directors or otherwise, both as to action in any official capacity and action in any other capacity while holding office, or while an employee or agent of the Corporation.

#### **SECTION 4.17 INSURANCE FOR CORPORATE AGENTS**

Except as may be otherwise provided under provisions of law, the Board of Directors, in its sole discretion, may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of one or more agents of the Corporation (including Directors, officers, employees or other agents of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Certificate of Incorporation, these Bylaws or provisions of law.

#### **SECTION 4.18 BOARD ACTION WITHOUT A MEETING**

Any action that the Board of Directors is required or permitted to take may be taken without a meeting if all Directors consent in writing to that action. Consent by a Director sent by email or other electronic means is considered written consent to the extent permissible under the General Corporation Law of the State of Delaware, as it exists on the date hereof or is hereafter amended. Such action by signed consent shall have the same force and effect as any other validly approved action of the Board of Directors. All consents shall be filed with the minutes of the proceedings of the Board of Directors.

#### **SECTION 4.19 CHAIRMAN OF THE BOARD**

Commencing with the Organizational Meeting and thereafter, at each annual meeting of the Board of Directors, the Directors shall elect by plurality vote a Chairman of the Board from among the Directors. The Chairman of the Board may also act as the President of the Corporation. The Board of Directors may remove the then-current Chairman of the Board, with or without cause, via a unanimous vote of all disinterested Directors. Said removal as the Chairman of the Board may not act as a removal from the Board of Directors without further action as provided for under these Bylaws. In the event that the Chairman steps down or is removed for any reason, the Board of Directors shall elect a new Chairman of the Board.

### **ARTICLE 5. OFFICERS**

#### **SECTION 5.1 DESIGNATION OF OFFICERS**

The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer, and an Executive Director. All officers shall be natural individuals. The Corporation may also have such other officers with such titles as may be determined from time to time by the Board of Directors. With the exception of the Executive Director, all officers shall be an employee of a Diamond or Platinum Member.

## **SECTION 5.2 ELECTION AND TERM OF OFFICE**

The officers shall be elected by plurality vote of the Board of Directors, at each annual meeting of the Board of Directors, and each officer shall hold office until he or she dies, resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

## **SECTION 5.3 REMOVAL AND RESIGNATION**

The Board of Directors may remove any officer from his or her elected office, either with or without cause, at any time upon a vote of three quarters (3/4) of the Directors present at a meeting duly held at which a quorum is present. An officer who is also an employee of a Member shall automatically be removed (i) if the officer ceases to be employed by that Member or (ii) if that Member ceases to be a Diamond or Platinum Member or terminates its membership in the Corporation. Any officer may resign at any time by giving written notice to the Board of Directors or to the President, Secretary or Executive Director of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this *Section 5.3* shall be superseded by any conflicting terms of a contract that has been approved or ratified by the Board of Directors relating to the employment the Executive Director.

## **SECTION 5.4 VACANCIES**

Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the Board of Directors. In the event of a vacancy in any office other than that of the President, such vacancy may be filled temporarily by appointment by the President until such time as the Board of Directors shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board of Directors may or may not be filled as the Board of Directors shall determine.

## **SECTION 5.5 DUTIES OF PRESIDENT**

The President shall be the chief executive officer and, if a Director, may also be the Chairman of the Board of Directors of the Corporation. The President, acting in the capacity of the President, shall, subject to the control of the Board of Directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Certificate of Incorporation, or by these Bylaws, or which may be prescribed from time to time by the Board of Directors, including presiding as chairperson at all meetings of the Members.

Except as otherwise expressly provided by law, by the Certificate of Incorporation, or by these Bylaws, the President shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the Board of Directors.

## **SECTION 5.6 DUTIES OF VICE PRESIDENT**

In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President.

The Vice President shall have other powers and perform such other duties as may be prescribed by law, by the Certificate of Incorporation, or by these Bylaws, or as may be prescribed by the Board of Directors.

#### **SECTION 5.7 DUTIES OF SECRETARY**

The Secretary shall:

1. Certify and keep at the principal office of the Corporation or at such other place as the Board of Directors may determine, the original, or a copy, of the Certificate of Incorporation, these Bylaws and any amendments to either document.
2. Keep at the principal office of the Corporation or at such other place as the Board of Directors may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors and of Members, recording therein the time and place of holding, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies.
3. See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law.
4. Advise the Members in writing of all results of any election of Directors and officers.
5. Be custodian of the records and of the seal of the Corporation and affix the seal, as required by law or the provisions of these Bylaws, to duly executed documents of the Corporation.
6. Keep at the principal office of the Corporation or at such other place as the Board of Directors may determine, a Member book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the Member book together with the date on which such membership ceased.
7. Exhibit at all reasonable times to any Members of the Corporation, or to the Member's agent or attorney, on request therefore, these Bylaws, the Member book, and the minutes of the proceedings of the Members of the Corporation.
8. In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Certificate of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

#### **SECTION 5.8 DUTIES OF TREASURER**

The Treasurer shall:

1. Have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the Board of Directors.

2. Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.
3. Disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the Board of Directors, taking proper vouchers for such disbursements.
4. Keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses.
5. Exhibit at all reasonable times the books of account and financial records to any Director of the Corporation, or to his or her agent or attorney, on request therefore.
6. Render to the President and Directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation.
7. Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.
8. In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Certificate of Incorporation of the Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

#### **SECTION 5.9 EXECUTIVE DIRECTOR**

The Executive Director of the Corporation shall perform such undertakings as are necessary to manage the day-to-day needs of the Corporation, including:

1. Scheduling and setting up meetings.
2. Facilitating communication between Members, including providing timely notices of meetings. Acting as the liaison to other consortia or associations with which the Corporation may choose to associate.
3. Providing Members with timely minutes, summaries and other reports with respect to the activities of the Corporation as may be prepared by the Secretary or the Executive Director.
4. Receiving and processing membership agreements, and executing them on behalf of the Corporation.
5. In general, performing all duties incident to the office of Executive Director and such other duties as may be required by law, by the Certificate of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

The Executive Director may engage third parties to assist the officers of the Corporation in performing their duties as described in these Bylaws, provided that the Executive Director enters into appropriate contracts protective of the Corporation and ensures compliance with terms and conditions of these Bylaws (including confidentiality obligations).

## **SECTION 5.10 COMPENSATION**

With the exception of the Executive Director, whose services shall be provided pursuant to a consulting and services agreement between the Corporation and an outside contractor, the officers shall serve without compensation by the Corporation.

## **ARTICLE 6. STEERING COMMITTEES, WORK GROUPS, TASK GROUPS AND PROJECTS**

### **SECTION 6.1 STEERING COMMITTEES**

The Corporation may form from time to time upon vote of the Board of Directors steering committees (each a “**Steering Committee**”). The voting procedures, composition and other policies of a Steering Committee may be set forth in and governed by the Operational Guidelines of the Corporation, provided such Operational Guidelines are first approved by the Board of Directors, or may be otherwise as established by the Board of Directors; provided that if not otherwise established the Steering Committee shall follow the procedures for Work Groups as set forth in Section 6.3.

### **SECTION 6.2 WORK GROUPS**

The Corporation shall have such committees as may from time to time be designated upon vote of the Board of Directors (“**Work Groups**”).

Meetings and actions of Work Groups shall be governed by, noticed and held in accordance with written Work Group Procedures to be adopted by the Board of Directors, and the Board of Directors from time to time may amend such Work Group Procedures.

### **SECTION 6.3 MEETINGS AND ACTIONS OF WORK GROUPS**

1. Formation. Any Diamond or Platinum Member may propose to the Board of Directors the establishment of one (1) or more Work Groups to carry out the work of the Corporation. Such proposal shall include the proposed charter of such Work Group, and the Members that initially desire to participate in such Work Group. The Board of Directors shall: (i) approve or disapprove the formation of each Work Group; (ii) approve or disapprove the charter of such Work Group; and (iii) appoint a pro tem chairperson of such Work Group from among the representatives of the Diamond and Platinum Members. The Board of Directors shall provide timely notice of the formation and chairperson of each Work Group to all Members entitled per the charter to participate in such Work Group as well as the then-current Work Group Procedures that will govern the actions of such Work Group. On the first meeting of the Work Group, the members may affirm the Board of Directors appointed chairperson or elect a replacement chairperson via plurality vote of the Diamond and Platinum Members represented in the Work Group from among Diamond and Platinum Members in attendance with one vote per Member. The chairperson shall serve for a term of one (1) year after which another election shall occur, using the same voting rules and candidate criteria, to either re-elect the chairperson or elect a new chairperson. Without limiting the powers of the Board of Directors as stated in these Bylaws, all output of Work Groups shall be subject to review and approval of the Board of Directors in accordance with these Bylaws and the IPR Policy prior to publication or disclosure by the Corporation and before becoming binding upon the Corporation and the Members.

2. Composition. Diamond, Platinum and Gold Members may become a member in all Work Groups. Upon approval of the Board of Directors, all Individual Members may also be entitled to become members of specified Work Groups, in such case Individual Members in good standing may apply for membership in the Specified Work Group. Gold and Individual Members shall not, however, have a vote on any matter voted upon by the Work Group. The Board of Directors may develop and publish guidelines which establish the objective minimum requirements for membership as part of the general Work Group Procedures.
3. Record of Activities. All Work Groups shall elect a secretary or other person to document and record the Work Group's activities.
4. Meetings. Work Groups shall hold regular meetings on a schedule as determined by such Work Group. The noticing of meetings of a Work Group and the governance thereof shall be subject to the applicable Work Group Procedures or Work Group Specific Procedures, if any, adopted by the Board of Directors.
5. Removal from Work Groups. The then-current Work Group Procedures or other internal policies of the Work Group shall govern the removal of any member of a Work Group or Task Group.

#### **SECTION 6.4 TASK GROUPS OVERVIEW**

Each Work Group may charter such subgroups (“**Task Groups**”) as they may from time to time designate upon vote of that Work Group. Meetings and actions of Task Groups shall be governed by, noticed and held in accordance with any written Work Group Procedures to be adopted by the Board of Directors.

#### **SECTION 6.5 MEETINGS AND ACTION OF TASK GROUPS**

1. Formation. The Work Group establishing a Task Group shall approve the charter, processes and policies of such Task Group. Subject to confirmation vote by the Work Group, the Task Group shall elect the initial and any replacement chairperson of a Task Group it established from among the Diamond, Platinum or Gold Members. The respective Work Group shall provide timely notice of the formation and pro tem chairperson of each Task Group to all Members of the Work Group. All output of Task Groups shall be subject to review and approval of the Work Group who chartered it and the Board of Directors in accordance with these Bylaws and the IPR Policy prior to publication or disclosure by the Corporation and before becoming binding upon the Corporation and the Members.
2. Composition. Membership in a Task Group shall be limited to those Members entitled to membership in the Work Group chartering it.
3. Record of Activities. The Task Group shall elect a secretary or other person to document and record the Task Group's activities.
4. Meetings. Task Groups shall hold regular meetings on a schedule as determined by such Task Group and approved by the Work Group who chartered it. The noticing of meetings and the governance thereof shall be subject to the applicable Work Group Procedures or other policies, if any, adopted by the Board of Directors.

## **SECTION 6.6 PROJECTS**

The Corporation may form projects from time to time (each a “**Project**”), which shall be considered a particular type of Task Group of the Corporation. All of the Corporation’s rules governing Task Groups shall apply to the Projects of the Corporation, provided, however, Projects may also be initiated by the Board of Directors. In addition, in order to form a Project at least three Members are required to lead, participate and, or, sponsor such Project, and of the requisite three Members, one must be a Platinum or Diamond Member. The Operational Guidelines, if adopted by the Corporation, may provide additional policies concerning Projects of the Corporation.

## **ARTICLE 7. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS**

### **SECTION 7.1 EXECUTION OF INSTRUMENTS**

The Board of Directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.

### **SECTION 7.2 CHECKS AND NOTES**

Except as otherwise specifically determined by resolution of the Board of Directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation with a value of less than Five Thousand U.S. Dollars (US \$5,000) shall be signed by the President, Treasurer or Executive Director. Checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness in excess of Five Thousand U.S. Dollars (US \$5,000), shall require the signatures of two (2) or more of the above-listed officers.

### **SECTION 7.3 DEPOSITS**

All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the Board of Directors may select.

## **ARTICLE 8. CORPORATE RECORDS AND REPORTS**

### **SECTION 8.1 MAINTENANCE OF CORPORATE RECORDS**

The Corporation shall keep at its principal office or at such other place as the Board of Directors may determine, all records required to be maintained by the Secretary of the Corporation as set forth in *Section 5.7*, as well as adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses.

### **SECTION 8.2 INSPECTION RIGHTS**

Subject to such confidentiality and nondisclosure requirements as the Board of Directors may reasonably deem appropriate, or restrictions imposed via any confidentiality and nondisclosure agreement concerning any particular record, book or document, all Members shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and shall have such other rights to inspect the books, records and properties of this



Corporation as may be required under the Certificate of Incorporation, other provisions of these Bylaws, and provisions of law.

### **SECTION 8.3 RIGHT TO COPY AND MAKE EXTRACTS**

Unless otherwise restricted pursuant to confidentiality and nondisclosure limitations, any inspection under the provisions of this *Article 8* may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.

### **SECTION 8.4 PERIODIC REPORT**

The Board of Directors shall cause any annual or periodic report required under the laws of Delaware to be prepared and delivered as required by the Delaware Secretary of State or such other office of the State of Delaware then charged with the recording of annual or periodic reports.

## **ARTICLE 9. IRC 501(c)(6) TAX EXEMPTION PROVISIONS**

### **SECTION 9.1 LIMITATION ON ACTIVITIES**

Notwithstanding any other provisions of these Bylaws, the Corporation shall not carry on any activities not permitted to be carried on by a corporation exempt from Federal income tax under Section 501(c)(6) of the Internal Revenue Code of 1986.

### **SECTION 9.2 PROHIBITION AGAINST PRIVATE INUREMENT**

No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Members, Directors or trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of the Corporation.

### **SECTION 9.3 DISTRIBUTION OF ASSETS**

In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary, or by operation of law), the Board of Directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of the Corporation to one or more "Qualified Organizations," as defined below, as the Board of Directors shall determine. For purposes of this *Section 9.3*, "Qualified Organization" shall mean a corporation or other organization organized and operated exclusively for religious, charitable, educational or other purposes meeting the requirements as shall at the time qualify either (i) as exempt from Federal income tax under Section 501(a) of the Internal Revenue Code of 1986 by reason of being an organization described in Section 501(c)(6) of the Internal Revenue Code of 1986, or (ii) as a corporation or other organization to which contributions are deductible under Section 170(c)(1) of the Internal Revenue Code of 1986.

## **ARTICLE 10. AMENDMENT OF BYLAWS**

Except where otherwise provided for in individual Articles herein, or Attachments, these Bylaws and any Attachments, or any of them, shall only be altered, amended, or repealed, and new Bylaws adopted, upon the affirmative vote of 3/4 of all Directors.

## **ARTICLE 11. CONSTRUCTION AND TERMS**

### **SECTION 11.1 CONFLICT**

If there is any conflict between the provisions of these Bylaws and the Certificate of Incorporation of the Corporation, the provisions of the Certificate of Incorporation shall govern.

### **SECTION 11.2 UNENFORCEABILITY**

Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holdings.

### **SECTION 11.3 REFERENCES**

All references in these Bylaws to the Certificate of Incorporation shall be to the Certificate of Incorporation filed with an office of the Secretary of State of the State of Delaware and used to establish the legal existence of the Corporation.

## ARTICLE 12. PARTICIPATION PROVISIONS

### SECTION 12.1 DETERMINATION AND RIGHTS OF MEMBERS

The Corporation shall have such classes of membership (“**Membership Classifications**”) as defined by the Board of Directors, including the initial classifications set forth in the definition of Member above. No Member shall hold more than one (1) membership in the Corporation. For purposes of this Section, a Member and its Affiliates shall be deemed one (1) Member.

Among the benefits generally to be afforded to the Members are the right to:

1. attend meetings of the general Members of the Corporation;
2. access to Final Specifications and documents as may be approved by the Board of Directors;
3. subject to *Article 15*, to be listed as a Member on the Corporation’s web site and press releases; and
4. access to the general Members’ portions of the Corporation’s web site.

### SECTION 12.2 QUALIFICATIONS FOR PARTICIPATION

Any company or individual supportive of the Corporation’s purposes as defined in *Section 3.2*, and not otherwise prohibited by treaty, law or regulation from abiding by the terms of these Bylaws, its Membership Agreement and the Corporation’s IPR Policy, and who pays the then-current annual dues applicable to its Membership Classification, qualifies for membership in the Corporation, and to participate as a participant in a particular Membership Classification provided such company or individual meets any additional qualifications applicable to its Membership Classification.

### SECTION 12.3 FEES AND DUES

The annual dues payable to the Corporation by each Membership Classification shall be established and may be changed from time to time by resolution of the Board of Directors. Initial dues shall be due and payable as set forth in the applicable membership agreement. Thereafter, yearly dues shall be due and payable as specified in the membership agreement. If any Member is delinquent in the payment of dues, such Member’s rights shall be deemed suspended upon written notice from the Corporation until all delinquent dues are paid.

### SECTION 12.4 NUMBER OF MEMBERS

There is no limit on the number of Members the Corporation may admit. Any company or individual who qualifies for membership pursuant to *Section 12.2* will be admitted as a Member of the Corporation. The Board of Directors may, however, in its sole discretion, limit the number of Members admitted to each Membership Classification so long as such limitations are not imposed for the sole purpose of excluding otherwise qualified applicants from such Member Classification and that at least one Membership Classification remains open to any company or individual that is qualified to join the Corporation pursuant to *Section 12.2*.

### SECTION 12.5 NONLIABILITY OF MEMBERS

No Member of this Corporation, as such, shall be individually liable for the debts, liabilities, or obligations of the Corporation.

#### **SECTION 12.6 NONTRANSFERABILITY OF PARTICIPATION AGREEMENTS**

No membership agreement may be assigned without the prior written consent of the Corporation, and any purported assignment without such written approval shall be null and void. Except as set forth in *Section 12.6.1*, and notwithstanding the foregoing, upon written notice to the Corporation, the Corporation shall automatically consent to an assignment pursuant to a bona fide Change in Control of a Member. As used therein, the term "Change in Control" shall mean: a) the consummation of any consolidation or merger of Member pursuant to which Member is not the surviving entity; or (b) all or substantially (including Membership in this Corporation) all of Member's assets shall be sold, leased, conveyed, or otherwise disposed of to a third party.

1. Any assignment that results in a Change in Control of a Diamond Member shall be subject to a vote of the remaining Directors appointed by Diamond Members pursuant to *Section 14.1.1* and the new Member may be required to sign a novation of the Diamond membership agreement. Failing such a vote in the affirmative, the assigned membership shall be downgraded to either a Platinum or Gold membership.

#### **SECTION 12.7 TERMINATION OF MEMBERSHIP**

The membership agreement of a Member shall terminate upon the occurrence of any of the following events:

1. Upon a failure to initiate or renew a membership agreement by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Member by the Secretary or Executive Director of the Corporation. A Member may avoid such termination by paying the amount of delinquent dues within a thirty (30) day period following the Member's receipt of the written notification of delinquency.
2. Upon fifteen (15) days' written notice from the Member.
3. Upon unanimous vote of all disinterested Directors when such Directors determine, after affording the Member in question the right to be heard on the issue, that the Member has violated the policies, procedures and duties of membership herein, including the requirements for membership as stated in *Section 12.2* above.
4. Upon a Member's dissolution.
5. Upon the expiration of a Member's current annual term if the Corporation determines that it is in the best interest of the Corporation to modify the Form of Participation Agreement for a particular class of member, and in the event that the terms of the class of participant has been either (A) replaced with a substitute class of participation; or (B) modified and requires a Member to execute the new Participation Agreement to continue to be a Member in the member class, in each case, provided that the Corporation has given notice to the Member of an event A or B. Notwithstanding the above, the Corporation will not alter the rights that a Member has to participate under these Bylaws by changes made in terms of the Participation Agreement.

In the event that two (2) or more Members combine (through merger, acquisition or otherwise), the resulting combined entity is permitted to only maintain one (1) Membership Agreement and have one (1) vote in all Member votes thereafter. Prior to the occurrence of any such corporate combination, the affected Members will notify the Corporation as to which Membership Agreement will survive the merger or acquisition and whether that Membership Agreement will be assigned in connection with the Change of Control (should assignment be required, the Corporation shall be deemed to automatically consent to the assignment upon such notice). Upon completion of the combination, any non-surviving Membership Agreement will automatically terminate.

All rights of a Member in the Corporation shall cease on termination of its Membership Agreement as herein provided. The termination of a Membership Agreement shall not result in any refund of dues already paid for the current dues period.

## **ARTICLE 13. MEETINGS OF MEMBERS**

### **SECTION 13.1 MEETINGS OF MEMBERS**

The annual meeting of the Members shall be held for the purpose of transacting such business as may be properly brought before the Members. Other regular meetings of the Members shall be held on dates and at times to be determined by the Board of Directors. Regular meetings of the Members for any purpose shall be called by the Board of Directors or by written request of three-quarters (3/4) of the Members. Basic Members may not attend meetings of the Members except upon invitation from the Board of Directors.

### **SECTION 13.2 CALL FOR MEETINGS OF MEMBERS**

Unless otherwise provided by the Certificate of Incorporation, these Bylaws, or provisions of law, notice stating the place, day and hour of the meeting of the annual meeting of Members shall be provided not less than sixty (60) days in advance thereof. Basic Members may, pursuant to Delaware law, attend plenary sessions of the annual meeting of the Members. In the case of a regular meeting, notice, specifying the purpose or purposes for which the meeting is called, shall be provided not less than fourteen (14) calendar days before the date of the meeting.

The primary means for the provision of notice shall be via electronic mail to the Member at the electronic mail address as it appears on the records of the Corporation. Personal notification may also include notification by internationally recognized delivery service, telephone, facsimile, or other electronic means; provided, however, such notification shall be subject to any and all acknowledgment requirements as may be set forth in the General Corporation Law of the State of Delaware as they may, from time-to-time, be amended.

Whenever any notice of a meeting is required to be given to any Member of this Corporation under provisions of the Certificate of Incorporation, these Bylaws, or the law of this state, a waiver of notice in writing signed by the Member, whether before or after the time of the meeting, shall be equivalent to the giving of such notice.

### **SECTION 13.3 QUORUM FOR MEETINGS**

Those Members entitled to attend and present at a properly noticed meeting of the Members shall constitute a quorum.

### **SECTION 13.4 REPRESENTATIVES**

Each Member shall designate in writing to the Executive Director one (1) individual to act as its primary representative. Each Member may also designate an alternate to act in the event that the primary representative is unable to attend a meeting or act on its behalf.

### **SECTION 13.5 CONDUCT OF MEETINGS**

Meetings of the Members shall be presided over by the President, or in his or her absence, by the Vice-President or other officer. The Secretary shall act as secretary of all meetings of Members, provided that, in his or her absence, a person appointed by the Secretary shall act as secretary for that meeting. Meetings shall be governed by such procedures as may be approved from time to time by the Members.

### **SECTION 13.6 ADVISORY VOTING**

Except as otherwise expressly provided for by these Bylaws, all votes of Members are advisory in nature only and do not act to bind or direct the Corporation's decisions, actions, or policies. With the exception of Basic Members, who shall not have any voting rights, each other classification of Member shall have one (1) vote on each matter submitted to a vote. A Member's designated primary representative or alternate, if applicable, shall be the only person entitled to cast a vote on behalf of the Member. Voting at meetings shall be by a show of hands in the case of Members attending in person, by voice ballot for Members attending by audio, videoconferencing or teleconferencing, or electronically for matters submitted for vote via electronic means.

## **ARTICLE 14. MEMBER CLASSIFICATIONS**

### **SECTION 14.1 DIAMOND MEMBERS**

1. The Corporation shall have Diamond Members. Any applicant qualified under Section 12.2 wishing to become a Diamond Member after the Organizational Meeting must be approved via 3/4 vote of all current Directors appointed by Diamond Members with such vote occurring via electronic means. Following an affirmative vote of the Diamond Members, an applicant for Diamond Membership shall be admitted to membership upon execution of a Diamond membership agreement.
2. Diamond Members who remain in good standing shall be:
  - a. Perpetually eligible to appoint a representative to the Board of Directors of the Corporation in accordance with these Bylaws;
  - b. Eligible to have a representative appointed or elected as an officer of the Corporation;
  - c. Eligible to participate in the Work Groups of the Corporation and have a representative chair the same; and
  - d. Subject to procedures and requirements as may be adopted by the Corporation, eligible to seek certification of the Member's products and/or services and use the Corporation's trademarks in connection with the Member's certified products or services.
3. Diamond Members may be downgraded to Platinum Members (or at their option Gold Members) upon unanimous vote of all Directors appointed by Diamond Members, less

one (1), when such Directors determine, after affording the Diamond Member in question the right to be heard on the issue, that the Diamond Member has failed to actively contribute to the work of the Corporation.

#### **SECTION 14.2 PLATINUM MEMBERS**

1. The Corporation shall have Platinum Members. Any applicant qualified under *Section 12.2* wishing to become a Platinum Member shall be admitted to membership upon its execution of the appropriate Membership Agreement.
1. Platinum Members who remain in good standing shall be:
  - a. Eligible to have a representative elected to the Board of Directors in accordance with these Bylaws;
  - b. Eligible to have a representative appointed or elected as an officer of the Corporation;
  - c. Eligible to participate in the Work Groups of the Corporation and have a representative chair the same; and
  - d. Subject to procedures and requirements as may be adopted by the Corporation, eligible to seek certification of the Member's products and/or services and use the Corporation's trademarks in connection with the Member's certified products or services.

#### **SECTION 14.3 GOLD MEMBERS**

1. The Corporation shall have Gold Members. Any applicant qualified under *Section 12.2*, and in the case of Nonprofit Educational Gold Members meets the further qualifications as set forth in *Section 14.3* below, shall be admitted to membership upon its execution of the appropriate Membership Agreement.
2. Gold Members who remain in good standing shall be:
  - a. Eligible to participate in the Work Groups of the Corporation in a non-voting capacity;
  - b. Eligible to lead and participate in Task Groups of the Corporation in a non-voting capacity; and
  - c. Subject to procedures and requirements as may be adopted by the Corporation, eligible to seek certification of the Member's products and/or services and use the Corporation's trademarks in connection with the Member's certified products or services.
3. The Corporation may also have Nonprofit Educational Gold Members. Any non-profit entity that is organized and operated exclusively as an educational entity under the laws and regulations of its domicile jurisdiction may apply for Membership as a Nonprofit Educational Gold Member. The Board of Directors shall review any and all applications for such level of Membership and may, in their sole discretion, accept such application

upon a determination that the applicant meets the requirements for this membership subset.

- a. Nonprofit Educational Members who remain in good standing shall be entitled to all Membership benefits of Gold Members; provided, however, that Nonprofit Educational Membership benefits (including but not limited to rights under the IPR Policy and the right to receive or review Confidential Information) shall not extend beyond employees of the nonprofit educational entity. For avoidance of doubt, it is expressly understood that membership rights and benefits do not extend to members or participants in nonprofit entities, their employees or contractors, or to governmental entities other than the educational entity applicant.

#### **SECTION 14.4 INDIVIDUAL MEMBERS**

The Corporation may have Individual Members who shall be natural persons. Applicants for Individual Membership, qualified under *Section 12.2* above, shall be admitted to membership upon affirmation of the Certificate of Incorporation, these Bylaws, and the IPR Policy; the execution of a Individual membership agreement.

If approved by the Board of Directors, all Individual Members who remain in good standing may be eligible to participate in specified Work Groups, subject to the terms of any Work Group Charter approved by the Board of Directors.

#### **SECTION 14.5 BASIC MEMBERS**

The Corporation may have Basic Members. Any applicant qualified under Section 12.2 shall be admitted to membership upon its execution of the appropriate Membership Agreement.

Basic Members shall have access to any and all online and in process documents of the Corporation as well as certification tools for self-testing purposes only. Basic Members shall not, however, be entitled to participate in email discussions, calls or face-to-face meetings of the Members (except for the limited right to attend the plenary sessions of the annual meeting of the Members) nor shall they be eligible to seek certification of the Basic Member's products and/or services and use the Corporation's trademarks in connection with the Basic Member's certified products or services. Basic Members shall, however, be entitled to all rights and privileges and subject to the obligations generally afforded to all Members pursuant to the IPR Policy.

### **ARTICLE 15. PUBLICITY**

No Member may make a press or other public announcement (including website listings) regarding its activities as a Member of the Corporation which names the identities of any other Member unless prior written consent is received from any Member named in the press release or public announcement. The Corporation may make a press or other public announcement (including website listings) regarding any subject germane to its purposes provided that prior written consent is received from any Member named in the press release or public announcement. Notwithstanding the foregoing, all Members hereby consent to the Corporation listing the Member's name and logo on the Corporation's website and in press or other public collateral regarding the Members' memberships in the Corporation.

### **ARTICLE 16. DISCLOSURE OF INFORMATION AND CONFIDENTIALITY**



## **SECTION 16.1    LIMITATION ON THE SCOPE OF DISCLOSED INFORMATION**

The Members acknowledge that they will not disclose or exchange information as part of the Corporation's activities among themselves unless such disclosure is necessary in order to achieve the lawful purposes of the Corporation. All information disclosed by a Member as a part of membership in the Corporation's activities shall be deemed nonconfidential except as may be provided below or as otherwise agreed to in a written agreement between the affected parties.

## **SECTION 16.2    NONDISCLOSURE**

With respect to Confidential Information, the receiving party agrees, for a period of three (3) years from the initial date of disclosure, to use the same care and discretion to avoid disclosure, publication, and dissemination outside the receiving party and its subsidiaries, contractors and consultants as the receiving party employs with its own confidential information, but no less than reasonable care. Any disclosure by a receiving party to its subsidiaries, contractors and consultants should be subject to an obligation of confidentiality at least as restrictive as those contained in this *Article 16*. The foregoing obligation shall not apply to any information which is: (1) already known by the receiving party prior to disclosure; (2) publicly available through no fault of the receiving party; (3) rightfully received without a duty of confidentiality; (4) disclosed by the disclosing party to a third party without a duty of confidentiality on such third party; (5) independently developed by the receiving party; (6) disclosed pursuant to the order of a court or other authorized governmental body, or as required by law, provided that the receiving party provides reasonable prior written notice to the disclosing party, and cooperates with the disclosing party, so that the disclosing party has the opportunity to oppose any such order; or (7) disclosed by the receiving party with the disclosing party's prior written approval. Notwithstanding anything to the contrary herein, any Member shall be free to use the residuals of Confidential Information for any purpose including use in the development, manufacture, marketing and maintenance of its products and services, subject only to the obligations herein with respect to disclosure of such Confidential Information. The term "residuals" means that Confidential Information in nontangible form, which may be retained in the unaided memories of individuals who have not intentionally memorized such Confidential Information and have had rightful access to such Confidential Information under this provision of these Bylaws. It is understood that receipt of Confidential Information under these Bylaws shall not create any obligation in any way limiting or restricting the assignment and/or reassignment of any employees of a Member within Member's organization. However, this *Section 16.2* shall not be deemed to grant to any party a license under another party's copyrights or patents.

Nothing contained herein shall preclude the Corporation from entering into Nondisclosure Agreements with third party non-Members.

## **SECTION 16.3    CORPORATION INFORMATION**

All public disclosures regarding the existence, Members, and activities of the Corporation must be approved by the Board of Directors; provided however that the Corporation and each Member may disclose a listing of Members' names (subject to the requirements related to press releases contained in *Article 15*). Public disclosure of any version or revision of a Draft Specification shall be subject to the approval by the Board of Directors pursuant to a vote as set forth in these Bylaws. Nonprofit Educational Members may not disclose any version of a Draft Specification to their members or participants, the employees or contractors of such members or participants, or to other governmental entities or their employees/contractors. If a Member shall be required to disclose any Confidential Information relating to the Corporation pursuant to a valid order of a court or other government body or any political subdivision thereof, the Member shall first give notice to the Board of Directors and make a reasonable effort to

obtain a protective order requiring that any such Confidential Information so disclosed be used only for the purposes for which the order was issued.

#### **SECTION 16.4 SURVIVAL OF CONFIDENTIALITY OBLIGATIONS**

After withdrawal, termination or nonrenewal as a Member, for any reason, a former Member has a continuing duty under this *Article 16*.

#### **SECTION 16.5 DISCLOSURE OF MEMBER INFORMATION**

From time to time a Member of a Work Group, Steering Committee or Task Group may deem it necessary to disclose Member confidential information to other Members of such Work Group, Steering Committee or Task Group. In such instances such Member may disclose the relevant information in confidence to Members of a Work Group, Steering Committee or Task Group, and such information shall be considered Confidential Information of the disclosing party or of the relevant Member that originally provided such Confidential Information if, and only if, the information is specifically designated as Confidential Information at the time of disclosure. Notwithstanding the foregoing, information shall be deemed Confidential Information if a Member inadvertently discloses it without identifying it as confidential at the time of disclosure but notifies all Members to whom such Confidential Information has been disclosed (in accordance with the following sentence) of the disclosing party's intention to maintain the confidentiality of such information and the receiving parties have not disseminated the subject information outside of their organization prior to receiving such notice. Any such designation shall be effected by (i) marking any information disclosed in writing in a manner which indicates it is the Confidential Information of the disclosing party; or (ii) by orally indicating that any information disclosed orally/visually is the Confidential Information of the disclosing party and then within ten (10) days providing the receiving parties of such information with a written summary of the orally/visually disclosed Confidential Information so that such Confidential Information is more easily identified. By disclosing Confidential Information a Member agrees that should any such Confidential Information be necessarily, inherently or inferentially disclosed by a Final Specification adopted by the Corporation, such information will be not be considered Confidential Information and such Member will waive all confidentiality and shall allow publication of such Final Specification.

### **ARTICLE 17. DISPUTES AND DISPUTE RESOLUTION**

#### **SECTION 17.1 APPLICATION**

The following provisions apply in the event of dispute between a Member and the Corporation. For purposes of *Article 17*, a Member and the Corporation are each sometimes referred to individually as a "party" and collectively as the "parties." Notwithstanding anything else herein, this *Article 17* shall only apply to disputes between the Corporation and its Members and shall not apply to any disputes between Members or between the Members and third parties.

#### **SECTION 17.2 WAIVER OF WARRANTIES**

ALL DRAFT SPECIFICATIONS AND FINAL SPECIFICATIONS OF THE CORPORATION AND ANY INTELLECTUAL PROPERTY OF THE CORPORATION THEREIN AND ANY CONTRIBUTIONS TO FINAL SPECIFICATIONS MADE BY MEMBERS ARE PROVIDED "AS IS," AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.

### **SECTION 17.3 LIMITATION OF LIABILITY**

IN NO EVENT SHALL THE CORPORATION BE LIABLE TO THE MEMBERS, OR ITS MEMBERS LIABLE TO THE CORPORATION, IN CONNECTION WITH THE CONTRACTUAL NATURE OF THESE BYLAWS OR ANY INTELLECTUAL PROPERTY RIGHTS AGREEMENTS OF THE CORPORATION, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EACH PARTY RELEASES THE OTHER PARTY AND ALL OF THE OTHER PARTY'S AFFILIATES, EMPLOYEES, AND AGENTS FROM ANY SUCH DAMAGES.

### **SECTION 17.4 MEDIATION**

The parties agree to first submit any controversy or claim between any Member and the Corporation arising out of or relating to these Bylaws, or the breach thereof, to nonbinding mediation in San Francisco, California, by a mediator to be selected by the parties from a panel selected by the International Chamber of Commerce ("ICC") ADR Dispute Resolutions Services. The parties agree to mediate in good faith over a minimum period of thirty (30) days.

### **SECTION 17.5 ARBITRATION**

Any controversy or claim between any Member and the Corporation arising out of or related to these Bylaws not resolved by mediation shall be settled by binding arbitration in accordance with the Arbitration Rules (the "**Rules**") of the ICC, and the procedures set forth below. In the event any inconsistency between the Rules of ICC and the procedures set forth below, the procedures set forth below shall control. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction thereof.

1. Location. The location of the mediation and arbitration shall be in Santa Clara County, California, U.S.A., or a location where the parties mutually agree.
2. Selection of Arbitrators. The arbitration shall be conducted by a panel of three (3) ICC arbitrators who are independent and disinterested with respect to the Corporation. If the parties are unable to agree to arbitrators, the arbitrators shall be appointed by ICC from among their panelists with relevant expertise.
3. Case Management. Prompt resolution of any dispute between any Member and Corporation is important to all parties and the parties agree that the arbitration of any such dispute shall be conducted expeditiously. The arbitrators shall be instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, prehearing discovery and activities), in order to complete the arbitration as expeditiously as possible.
4. Remedies. The arbitrators may grant such legal or equitable remedy or relief (including injunctive relief) that the arbitrators deem just and equitable, to the same extent that such remedy or relief could be granted by a State or U.S. Federal court; provided, however, that such remedy or relief is consistent with the remedies and limitations set forth in these Bylaws.

5. Expenses. The expenses of the arbitration, including the arbitrators' fees, shall be shared equally among the parties. Each party shall be responsible for its own attorneys' fees, including expert witnesses.
6. Confidentiality. Except as set forth below, the parties shall keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, experts, investors, insurers, legal counsel, and when required to disclose by applicable securities laws.
7. Intellectual Property. There shall be no arbitration of issues of the validity, infringement or enforceability of patents or copyrights. Further, this Section does not apply to any intellectual property rights of a Member with respect to other Members or third parties.

#### **SECTION 17.6 SURVIVAL**

This *Section 17* shall survive any termination of membership pursuant to *Section 12.8* or termination of membership for any other reason.

#### **CERTIFICATE OF SECRETARY**

I hereby certify:

That I am the duly appointed Secretary of the Open Connectivity Foundation, Inc., a Delaware Nonprofit Corporation; and

The foregoing Bylaws comprising 27 pages, including this page, constitute the Bylaws of the Corporation as duly adopted by the Board of Directors of said Corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name this 1<sup>st</sup> day of October 2018.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature