

## **ARTICLE I NAME, PURPOSE, AND OFFICES**

### **Section 1.1 Name**

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

### **Section 1.2 Principal Office**

The principal office of the Foundation shall be located at 401 Edgewater Place, Suite 600, Wakefield, MA 01880. The Board of Directors of the Foundation (the “Board of Directors”) is hereby granted full power and authority to change its principal office from one location to another, both within and without said state.

### **Section 1.3 Other Offices**

Branch or subordinate offices may be established at or moved to any place or places, and closed by the Board of Directors.

### **Section 1.4 Purpose**

The nature of the business or purposes to be conducted or promoted by the Foundation is to engage in any lawful act or activity for which corporations that are organized not for profit may be organized under the Delaware General Corporation Law (“DGCL”). The primary purpose of the Foundation is to improve the state of software security.

Specifically, the Foundation will: (i) support the building of impactful projects; (ii) develop and nurture communities through events and chapter meetings worldwide; (iii) provide educational publications & resources; (iv) operate a branding program based upon distinctive trademarks to create high customer awareness, demand for, and confidence in the Foundation, its members, projects, and activities; and (v) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

In connection with the foregoing, the Foundation intends to engage in some or all of the following activities, to: (a) drive the development of, disseminate, support and maintain documents, standards, guidelines, cheat sheets, and other projects; (b) maintain a membership program; (c) administer grants and fundraising including donations, bequests, seeking grants, hosting significant global events, activities, and trainings; (d) create and own distinctive trademarks, service marks and/or certification marks; (e) administer or subcontract a branding program; (f) create various printed and/or electronic materials for distribution to members and non-members; (g) maintain its own website; (h) maintain relations with, and leverage standards developed by, other standard setting organizations and industry consortia to ensure coherence among specifications maintained by the Foundation and such other organizations; (i) maintain a global chapter program; (j) operate committees as approved by the Board of Directors; and (k) undertake those other activities which its Board of Directors may from time to time approve.

### **Section 1.5 Non-profit Status**

The Foundation is organized and shall be operated as a non-stock membership corporation operating not for profit under the DGCL. The Foundation is organized exclusively for charitable and educational purposes, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations described under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (hereinafter, the “Code”), or corresponding Section of any future federal tax code.

The Foundation claims exemption from Federal taxation for the Foundation pursuant to Section 501(a) of the Code. Until such time, if ever, as such exemption is lost, the Foundation 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)(3) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

In the event that such exemption is obtained and until such time, if ever, as such exemption is denied or lost: (i) no part of the net earnings of the Foundation shall inure to the benefit of, or be distributable to, any member of its Board of Directors, its officers, or other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth herein; (ii) no substantial part of the activities of the Foundation shall be the carrying on of propaganda or otherwise attempting to influence legislation, and the Foundation shall not participate or intervene in (including the publication or distribution of statements) any political campaign on behalf of (or in opposition to) any candidate for public office; (iii) the Foundation shall be operated and organized exclusively for charitable and educational purposes, within the meaning of Section 501(c)(3) of the Code; and (iv) notwithstanding any other provisions of these By-laws, the Foundation shall not carry on any other activities not permitted to be carried on (A) by an organization exempt from federal income tax under Section 501(c)(3) of the Code, or (B) by an organization contributions to which are deductible under Section 170(c)(2) of the Code.

## ARTICLE II MEMBERS

### Section 2.1 Classes of Membership

The Foundation has the following classes of Membership: Individual Members and Complimentary Members. Individual Members and any future classes of members entitled to voting rights shall be collectively referred to as "Voting Members." All voting and non-voting memberships in the Foundation are collectively referred to in these By-laws as "Memberships." In these By-laws, a person or entity holding Membership is referred to as a "Member."

The Individual Member class has the following subclasses: *Standard*, *Regional*, *Student*, *Lifetime*, and *Distinguished Lifetime*. Only the Board shall grant *Distinguished Lifetime Membership*.

The Board of Directors may create additional classes or subclasses of voting and non-voting Members in the future and may amend the rights of existing classes of Members in each case in accordance with to Section 2.7 of these By-laws.

### Section 2.2 General Conditions of Membership

Any individual shall be admitted to Membership upon: (i) acceptance of its written application on such form as may be from time to time required by the Foundation (which acceptance shall be administered in a non-discriminatory fashion) and (ii) unless otherwise provided by the Board of Directors, payment of such application fees, assessments, initiation fees (if any), annual dues or other fees for such class or subclass of Membership as may from time to time be established by the Board of Directors (collectively, "Fees"); provided, however, that the Foundation (x) shall have no obligation to accept, nor shall it have any liability for refusing to accept, any application for Membership, and (y) shall have the right to restrict the ability of any Member to exercise any or all rights of Membership; in each case, to the extent that the Foundation reasonably believes on advice of legal counsel that it might violate any federal, state or foreign law or regulation applicable to it by acting otherwise.

A Member shall remain in good standing as a Member, provided such Member complies with the terms and conditions of the Foundation's Certificate of Incorporation ("Certificate of Incorporation"), By-laws, Membership Application, and such rules and policies as the Board of Directors and/or any committees thereof (each a "Board Committee") may from time to time adopt (collectively, "Foundation Policies"), including without limitation, timely payment of all fees and penalties for late payment as may be determined by the Board of Directors (such Fees and penalties are collectively referred to in the By-laws as "Financial

Obligations,” and all of the foregoing good standing requirements are collectively referred to in the By-laws as “Membership Obligations”).

For purposes of these By-laws, “Foundation Policies” shall include, without limitation, the Foundation’s Code of Conduct, the Foundation’s Membership Policy, Elections Policy, Committees Policy, Signatory Policy, Grant Policy and IPR Policy (each as defined elsewhere in these By-laws), and all provisions of all other applicable Foundation policies, agreements, and any other operational and/or good standing policies, such as grace periods and policies around technical failures, in each case, as from time to time adopted by the Board of Directors and/or any Board Committee.

### **Section 2.3 Privileges of Individual Membership**

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

run for election as a member of the Board of Directors (each a “Director”) per the Foundation election policy approved by the Board of Directors (the “Elections Policy”);

vote on a “one vote per Member” basis in elections of Directors in accordance with the Elections Policy;

serve as a corporate officer (e.g. “Chair”, “Vice Chair”, “Secretary”, “Treasurer”) if elected to the Board of Directors;

run for election as officer of any committee of the Members of the Foundation (each such committee, a “Member Committee”, and each such officer, a “Committee Officer”);

vote in elections of the Committee Officers of the Member Committees in which such Individual Member participates;

attend and participate (on a one vote per Member basis) in all general and special meetings of the Membership provided for in Article III of these By-laws;

vote on each matter submitted to a vote of the Voting Members;

propose initiatives to be acted upon by the Foundation; and

all rights of the Complimentary Members other than the rights specified in Section 2.4(a).

### **Section 2.4 Privileges of Complimentary Membership**

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

attend (on a non-voting basis) all general and special meetings of the Membership provided for in Article III of these By-laws;

propose initiatives to be acted upon by the Foundation;

receive such free or discounted services provided by the Foundation for such Member’s Membership class as the Board of Directors may designate from time to time; and

such other benefits, rights, and privileges applicable to such Member’s Membership class as the Board of Directors may from time to time designate, including but not limited to, the applicable Membership benefits set forth in the then current Foundation “Membership Policy” (if any) approved by the Board of Directors (the “Membership Policy”).

### **Section 2.5 Rights in Intellectual Property**

All intellectual property submitted to or owned, adopted, or created by the Foundation, including without limitation, any of the same which may be represented by any Specifications, other standards, guidelines, policies, procedures, or tests (collectively, “Intellectual Property”), shall be subject to such policies and procedures, including the Foundation’s Intellectual Property Rights Policy (the “IPR Policy”), as may from time to time be adopted by the Board of Directors.

## **Section 2.6 Privileges Generally**

Only the individual person that has been accepted as a Member of the Foundation shall enjoy the rights and privileges of such Membership.

Memberships shall be non-transferable, non-salable and non-assignable.

## **Section 2.7 Additional Classes of Members**

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

## **Section 2.8 Termination or Suspension of Membership**

Any Member may be suspended from Membership or have its Membership terminated by the Board of Directors for failure to satisfy its Membership Obligations, for engaging in any conduct, either within or without the Foundation, that is contrary to the interests of the Foundation or the advancement of the Foundation's business or industry goals, or as provided in Section 2.2 of these By-laws (in any such case, other than conduct or actions taken in good faith reliance on Article XIV of these By-laws). Financial Obligations already paid shall not be refundable upon any such termination or suspension. All Financial Obligations of such Member that may be accrued and unpaid as of such termination or suspension shall remain due and payable. Except as provided in the last paragraph of this Section 2.8 or the preceding sentence, no termination or suspension of Membership for any other purpose shall be effective unless:

The Member is given notice of the proposed termination or suspension of Membership and the reasons therefor;

Such notice is delivered personally or by certified mail, return receipt requested, or by a national or international overnight courier service, or by other notice per these By-laws, sent to the last address of the Member shown on the Foundation's records;

Except in the case of termination or suspension of Membership under Section 2.2 above, such notice is given at least thirty days before the effective date of the proposed termination or suspension of Membership; and

Except in the case of termination or suspension of Membership for failure to satisfy a Financial Obligation or under Section 2.2 above, such notice sets forth a procedure determined by the Board of Directors (or other body authorized by the Board of Directors) to decide whether or not the proposed termination or suspension shall take place, whereby the Member is allowed to be heard by such body, either orally (and represented by counsel if the Member so desires, at its sole cost and expense) or in writing, not less than five days before the effective date of the proposed termination or suspension.

Notwithstanding the foregoing, in the event of termination pursuant to Section 2.2 above or that the Board of Directors believes in good faith that a Member is engaging in willful misconduct to the material detriment of the best interests of the Foundation and its Members, the Board of Directors may suspend such Member's Membership immediately, provided that such Member is otherwise afforded the protections provided for in subsections (a), (b) and (d) of this Section 2.8.

## **Section 2.9 Resignation by Member**

A Member may resign as a Member at any time. Any Financial Obligations already paid by such Member shall not be refundable in such event, and all such Financial Obligations of such Member which may be accrued and unpaid as of such date shall remain due and payable.

## **Section 2.10 Association Management Platform**

The name and address of each Member shall be contained in a record to be maintained at the principal office of the Foundation (the "Association Management Platform"). Termination of any Membership shall be

recorded in such record together with the date of such termination.

Each Member shall be responsible for apprising the Foundation 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 Committees designated by such Member in its application for Membership or to receive notices or to vote on behalf of such Member.

### **Section 2.11 Levy of Dues, Assessments, or Fees**

The Foundation may levy dues, assessments, or fees upon its Members in such amounts as may be approved from time to time by the Board of Directors. 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 before the date such dues, assessments, or fees are due and payable, except where the Member is, by contract with the Foundation or otherwise, independently and explicitly liable for such dues, assessments or fees. No provision of the Certificate of Incorporation or By-Laws of the Foundation 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 Foundation for indirect or consequential damages.

### **Section 2.12 Use of Names**

Neither the Foundation 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 Foundation and any Member may each disclose and publicize such Member's Membership in the Foundation, and the Alliance may display the logo of a Member at the Alliance website.

## **ARTICLE III MEETINGS OF MEMBERS**

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

All face to face 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 time as may be fixed from time to time by the Board of Directors or Executive Director, or if not so designated, at the registered office of the Foundation.

### **Section 3.2 Annual Meeting**

Annual meetings of Members ordinarily shall be held by written consent pursuant to Section 3.10. Notwithstanding the foregoing, however, the Board of Directors may call any annual meeting to be held in person at such date and time as shall be designated from time to time by the Board of Directors or the Chairperson of the Board of Directors (the "Chair"). Pursuant to such written consent, or at such meeting, as applicable, the Voting Members shall elect a Board of Directors in accordance with Section 4.3 and shall transact such other business as may properly be addressed by written consent, or at such meeting, as applicable.

### **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, the Executive Director, or the Secretary at the request in writing of a majority of the Directors then in office, or at the request in writing of Voting Members entitled to vote at least ten percent of the aggregate votes of all Voting Members. 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 the meeting.

Upon request by any person or persons entitled to call a special meeting of the Voting Members, the Executive Director, the Chairperson of the Board of Directors (the "Chairperson") (if any), the Vice-Chair, or the Secretary shall cause notice to be given within thirty days of receipt of such request.

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

Except as otherwise provided by law or these By-laws, a notice of each meeting of the Members, annual or special, stating the place, if any, date and hour of the meeting, the means of remote communication, if any, by which Members may be deemed to be present in person and vote at such meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be given not less than ten or 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 (defined in Section 6.1) who has charge of the system of record for the Foundation shall prepare, at least ten days before every meeting of Members, a complete list of the Members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each such Member. Nothing contained in this Section shall require the Foundation 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 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 Foundation. If the Foundation determines to make the list available on an electronic network, the Foundation may take reasonable steps to ensure that such information is available only to Members of the Foundation. If the meeting is to be held at a place, then 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. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any Member during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

### **Section 3.6 Quorum**

Except as otherwise provided by statute, the Certificate of Incorporation or these By-laws, Voting Members entitled to vote more than ten percent of the aggregate votes of all Voting Members (or such higher percentage of Voting Members as may be required by law, these By-laws or the Certificate of Incorporation, to approve any action to be taken at such meeting), present in person or represented by proxy, shall constitute a quorum at all meetings of the Members for the transaction of business. Member Committees 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, except as otherwise proved by statute, the Certificate of Incorporation, or these By-laws.

### **Section 3.7 Adjournments**

Any meeting of Members may be adjourned from time to time without notice to any other time and to any other place, if any, at which a meeting of Members may be held under these By-laws, which time and place, if any, thereof, and the means of remote communications, if any, by which Members may be deemed to be present in person and vote at such adjourned meeting shall be announced at the meeting by a majority of the Voting Members present in person or represented by proxy and entitled to vote at such meeting (regardless of whether a quorum is present), 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 all Members entitled to vote at the meeting.

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

When a quorum is present at any meeting of Members, in all matters other than the election of the Board of Directors, the vote of more than fifty percent of the aggregate votes of all Voting Members, present

in person or represented by proxy at such meeting and entitled to vote on the question, shall decide any question brought before such meeting, 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. Members of the Board of Directors shall be elected by a plurality of the votes of the Voting Members present in person or represented by proxy at the meeting and entitled to vote thereon in accordance with the Elections Policy

Notwithstanding Section 3.8(a), in all matters other than the election of the Board of Directors, in the event that any vote is to be taken of a single class of Voting Members, then a quorum for such vote shall be not less than ten percent of the Voting Members of that class, and when such quorum is present, the vote of more than fifty percent of the aggregate votes of the Voting Members of that class present in person or represented by proxy at such meeting and entitled to vote on the question, shall decide such question

In the event that the Voting Members shall desire to take any action that they are permitted to take by these By-laws, the Certificate of Incorporation or applicable law, and such action would, by provision of these By-laws or any resolution adopted by the Board of Directors, require a Super Majority Vote of the Board of Directors were such action to be taken by the Board of Directors, then the quorum required for such action shall be as specified in Section 3.6 above, and the taking of such action by the Voting Members shall require the affirmative vote of a majority of all Voting Members, present in person or represented by proxy at such meeting and entitled to vote on the question.

### **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 the Member 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. Without limiting the manner in which a Member may authorize another person or persons to act for such Member as proxy pursuant to this Section, the following shall constitute valid means by which a Member may grant such authority:

A Member may execute a writing authorizing another person or persons to act for such Member as proxy. Execution may be accomplished by the Member or such Member's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means including, but not limited to, by facsimile signature.

A Member may authorize another person or persons to act for such Member as proxy by transmitting or authorizing an electronic transmission to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such transmission, provided that any such electronic transmission must either set forth or be submitted with information from which it can be determined that the electronic transmission was authorized by the Member. If it is determined that such electronic transmissions are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information upon which they relied.

### **Section 3.10 Action Without Meeting**

Any action required to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of a Member Committee, Sub-Group (defined in Section 5.5(b) below) thereof, or other group of Members or subset of Members, may be taken without prior notice and without a vote, if a consent in writing, setting forth the action to be taken, shall be signed by Members (or members of a class of Members, as the case may be) making up not less than that percentage of all Members 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 proxyholder,

or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written and signed for the purposes of this Section, provided that any such electronic transmission sets forth or is delivered with information from which the Foundation can determine (A) that the electronic transmission was transmitted by the Member or proxyholder or by a person or persons authorized to act for the Member or proxyholder and (B) the date on which such Member or proxyholder or authorized person or persons transmitted such electronic transmission.

A consent given by electronic transmission is delivered to the Foundation upon the earliest of: (i) when the consent enters and information processing system, if any, designated by the Foundation for receiving consents, so long as the electronic transmission is in a form capable of being processed by that system and the Foundation is able to retrieve that electronic transmission; (ii) when a paper reproduction of the consent is delivered to the Foundation's principal place of business or an officer or agent of the Foundation having custody of the book in which proceedings of meetings of Members are recorded; (iii) when a paper reproduction of the consent is delivered to the Foundation's registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested; or (iv) when delivered in such other manner, if any, provided by resolution of the Board of Directors of the Foundation. A consent given by electronic transmission is delivered under this provision even if no person is aware of its receipt. Receipt of an electronic acknowledgment from an information processing system establishes that consent given by electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

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

### **Section 3.11 Action Held by Remote Communication**

If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, Members not physically present at a meeting of Members may, by means of remote communication: (A) participate in a meeting of Members; and (B) be deemed present in person and vote at a meeting of Members whether such meeting is to be held at a designated place or solely by means of remote communication, provided that (i) the Foundation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a Member or proxyholder, (ii) the Foundation shall implement reasonable measures to provide such Members and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings, and (iii) if any Member votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Foundation.

### **Section 3.12 Nomination and Election Procedures**

Subject to the provisions of Section 4.3, the Board of Directors shall establish a reasonable nomination and election policy given the nature, size, and operations of the Foundation, including a reasonable means for Members of appropriate classes to nominate a person for election as a Director, a reasonable opportunity for a nominee to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy (if requested by such nominee), a reasonable opportunity for all nominees to solicit votes (if requested by any such nominee), and a reasonable opportunity for all Members entitled to vote thereon to choose among the nominees.

### **Section 3.13 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**

The business and affairs of the Foundation shall be managed by its Board of Directors, which shall be, and shall possess all of the powers of, the “Governing Body” of the Foundation as a non-stock membership corporation under the DGCL. The Board of Directors may exercise all powers of the Foundation 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**

Subject to Section 4.4, the total number of Directors shall be at least five and not more than nine.

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

Each Individual Member (while remaining in good standing) shall be entitled to nominate a representative to run for election as a Director, and to vote with the other Individual Members, voting as a class, in all elections of the Board Directors, per the number of vacancies at each election, in accordance with the Elections Policy. Except as otherwise specified in the Elections Policy or approved by the Board of Directors, each Director shall have a term of two years, with a maximum of two terms in any ten year period, and thereafter, subject to Section 4.3(b) below

Each Director shall hold office until the earliest to occur of (i) the expiration of the term for which such Director was elected or appointed, as the case may be and such Director’s successor is elected and qualified; (ii) the expiration or termination of Membership of the Member that nominated such Director; or (iii) the death, resignation or removal of such Director. In addition, during such times as the Membership of any Member that has a representative serving as a Director is suspended pursuant to Section 2.8 above, the attendance and voting rights of such Director representative shall also be suspended until such time, if ever, as such suspension is lifted

The Board of Directors may approve from time to time such reasonable attendance and other requirements as it shall deem to be advisable to ensure that seats on the Board of Directors are held by active, contributing individuals. Such rules may provide that in the event that such requirements have not been met, any Member may lose its ability to be represented on the Board of Directors, and/or that a Director who fails to meet such requirements shall automatically be deemed to have resigned from the Board of Directors, but no such rule may be imposed retroactively.

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

Subject to Section 2.7 above, the number of Directors, the persons eligible to become Directors and the classes of Members eligible to elect and/or nominate Directors may be amended at any time by a 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 Foundation in writing or by electronic transmission at the principal place of business of the Foundation or to the Executive Director 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 nominated and elected by a Member under Section 4.3 may be removed by that Member. Any or all the Directors who were elected by a class of Members voting as a class or by the Board of Directors may be removed by a majority vote of such class of Members or Board of Directors, respectively. Unless otherwise specified by law or the Certificate of Incorporation, any Director may be removed by a majority of the other Directors then in office for engaging in any conduct, either within or without the Foundation, that is contrary to the interests of the Foundation or to the advancement of the Foundation’s business or industry goals; provided, however, that the Member or class of Members that designated and elected or nominated and elected (as the case may be) such removed Director shall be entitled

to designate and elect or nominate and elect (as the case may be) a replacement for such removed Director to serve for the balance of such removed Director's term.

#### **Section 4.6 Vacancies**

Except as set forth in Section 4.3(c), a vacancy on the Board of Directors occurring because of the death, resignation or removal of a Director may be filled by the Member that appointed or nominated and elected, as appropriate, such Director. Vacancies on the Board of Directors occurring by reason of an expansion of the Board of Directors, unless otherwise provided in the vote authorizing such expansion, shall be filled by the vote of a majority of Directors then in office, whether or not less than a quorum, or by a sole remaining Director. 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

In the event and during the continuance 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**

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 Executive Director, Chair, Vice Chair, Secretary, Treasurer, or on the written request of two or more Directors, or by one Director if there is only one Director in office. Notice shall be given to each Director in person, by telephone, or by facsimile, electronic mail or other form of electronic communications, sent to such Director's address as it appears on the records of the Foundation, at least twenty-four (24) hours in advance of the meeting, or by written notice mailed to each Directors address at least forty-eight (48) hours in advance of the meeting. A notice need not specify the purposes of the meeting.

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

Except where a 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 such 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, the Certificate of Incorporation or these By-laws

To pass a "Super Majority Vote", a resolution must be taken at a meeting of the Board of Directors at which at least two-thirds of the Directors then in office are present and participating and in support of which at least two-thirds of the Directors then in office have voted affirmatively, or by an equivalent number of Directors acting by written consent in the manner described in Section 4.11 below. A Super Majority Vote of the Board of Directors shall be required with respect to the following matters

Amending or repealing any provision of these By-laws

Amending the Certificate of Incorporation

Adopting or recommending to the Voting Members an agreement of merger or consolidation

Approving or recommending to the Members the sale, lease or exchange of all or substantially all of the Foundation's property and assets

Approving or recommending to the Members the dissolution, liquidation or winding up of the Foundation or revocation of any such dissolution, liquidation or winding up

Enlarging or reducing the size of the Board of Directors

Amending or modifying the eligibility requirements for Membership on the Board of Directors or the classes of Members eligible to nominate and elect Directors

Adopting, amending, or repealing any Foundation Policy, including but not limited to the Code of Conduct, Elections Policy, IPR Policy, Membership Policy, Committees Policy, Signatory Policy and Grant Policy

Delegation of any responsibility or duty of the Board of Directors to any Member Committee or Board Committee (by approval of a Member Committee charter or otherwise); and

Any other matter specifically requiring a Super Majority Vote of the Board of Directors pursuant to these By-laws

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, unless otherwise required by law, these By-laws, or the Certificate of Incorporation. 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. If 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**

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 the By-laws of the Foundation for the taking of any such action at a meeting) consent thereto in writing or by electronic transmission, so long as

such written consent shall have been sent simultaneously to all Directors then in office for their consideration prompt written notice of any action so taken is given to those Directors who have not consented in writing or by electronic transmission; and

two or more such Directors have not objected to the taking of any such action by written notice delivered to the Foundation within ten business days following the date that written notice of the Directors action is mailed or otherwise delivered to such Directors

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 later at an actual meeting of the Board of Directors

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 (b)

After an action is taken, the consent or consents relating thereto shall be filed with the minutes of the proceedings of the Board of Directors, in the same paper or electronic form as the minutes are maintained.

### **Section 4.12 Remote 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 Foundation.

### **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, the Foundation may reimburse Directors for expenses incurred while acting on behalf of the Foundation 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 Foundation in any other capacity as an Officer, agent, employee or otherwise, and receiving compensation therefor. The Board of Directors may also approve reimbursement of expenses for members of Board Committees in connection with their service on such Board Committees.

## **ARTICLE V EXECUTIVE COMMITTEE AND OTHER COMMITTEES**

### **Section 5.1 Executive Committee**

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

Approving any action which requires approval of the Voting Members

Filling vacancies on the Board of Directors

Fixing compensation of the Directors for serving on the Board of Directors or on any Board Committee

Amending or repealing any resolution of the Board of Directors which by its express terms is not so amendable or repealable

Taking any other action at any time reserved solely to the full Board of Directors under the DGCL; and

Adopting any resolution or approving any action that requires a Super Majority Vote under these By-Laws

### **Section 5.2 Other Committees of the Board of Directors**

The Board of Directors may create such nominating, audit, compensation and other Board Committees, each consisting of one or more Directors appointed by the Board of Directors, as the Board of Directors may from time to time deem advisable, to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board of Directors, subject to the limitations imposed by the Certificate of Incorporation or by these By-laws. No such Committee shall have the power or authority to take any action prohibited by Section 5.1 above to be taken by the Executive Committee. The Board of

Directors may designate one or more Directors as alternate members of any Board Committees, who may replace any absent member at any meeting of such Board Committees. Any such Board Committee or Board Committees shall have such powers, duties and 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 5.3 Meetings of Committees of the Board of Directors**

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 of the Board of Directors.

### **Section 5.4 Term of Office of Members of Committees of the Board of Directors**

Each member of a Board Committee shall serve for such term as shall be established at the time of his or her election in accordance with the Elections Policy.

### **Section 5.5 Committees of the Members**

A Project Committee of the Foundation is hereby established, which may have such Sub-Groups as from time to time may be approved by the Board of Directors. The Project Committee and its Sub-Groups shall be the principal Member-level forum for the discussion and preliminary adoption of technical strategy and standards, 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 as shall from time to time be established by the Board of Directors, or as set forth in such Project Committee charter, rules, and policies as shall have been previously adopted by the Board of Directors. The Project Committee may make technical recommendations to the Board of Directors concerning technical strategy and other technical work products of the Foundation and may undertake such other tasks as may from time to time be established by the Board of Directors, provided that all strategies and standards may only be finally adopted by the Board of Directors

From time to time, the Board of Directors may establish additional Member Committees. Each Member, so long as it remains a Member in good standing, shall be entitled to appoint such representatives to each such Member Committee, with such voting rights (if any), as set forth in Article II. Unless otherwise specified in these By-laws or by the Board of Directors, each Member Committee may have such sub-groups, working groups, and other groups as from time to time may be approved by such Member Committee, within the strategic direction established by the Board of Directors (each a “Sub-Group”)

Member Committees are subject to the Committees Policy (if any). {#member-committees-are-subject-to-the-committees-policy-if-any. .list-paragraph}

## **ARTICLE VI OFFICERS**

### **Section 6.1 Officers**

The officers of the Foundation (each an “Officer”) shall be a Chair (who shall also be a Director), Vice Chair, Treasurer, and a Secretary. The Foundation may also have at the discretion of the Board of Directors, an Executive Director, and such other Officers with such titles, terms of office and duties as may be determined in accordance with the provisions of Section 6.3. When the Foundation has a Chair, 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.

## **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 and may be filled by the Board of Directors, at its discretion.

## **Section 6.3 Election**

The Board of Directors at its first meeting after each annual election of Directors shall choose a Chair, Vice Chair, Treasurer, and a Secretary. Other Officers may be elected by the Board of Directors at such meeting, and any or all Officers may be replaced, at any other meeting of, or by written consent of, the Board of Directors.

## **Section 6.4 Tenure**

Each Officer of the Foundation 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 (i) death, resignation or removal, or (ii) ceasing to be an employee of a Member represented, or (iii) the termination of the Membership of the Member that is his or her employer. 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 officer may resign by delivering his or her written resignation to the Foundation 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 Chair**

The Chair shall have all the powers normally associated with the role of chief executive officer and preside at all meetings of the Board of Directors and the Members. The Chair shall oversee the management of the business of the Foundation and see that all orders and resolutions of the Board of Directors are carried into effect. Without limiting the foregoing, the Chair shall:

Subject to the then current Foundation policy (if any) regarding Foundation signature authority (the "Signatory Policy") that has been approved by the Board of Directors, execute bonds, mortgages, and other contracts, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof is governed by the Signatory Policy (if any) or is otherwise expressly delegated by the Board of Directors to some other officer or agent of the Foundation; and

Oversee the Executive Director (if any)

## **Section 6.6 Executive Director**

The Executive Director (if any) shall be an *ex officio* member (in a non-voting capacity) of the Board of Directors, preside over the day-to-day affairs of the Foundation under the direction of the Board of Directors, and perform such other duties and have such other powers as the Board of Directors 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:

Prepare and maintain lists of Members and their addresses as required

Attend all meetings of the Board of Directors and all meetings of the Members and record all the proceedings of the meetings of the Foundation and of the Board of Directors in a book to be kept for that purpose and perform like duties for the standing Board Committees when required; and

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

### **Section 6.8 Treasurer**

The Treasurer (if any) shall perform such duties and shall have such powers as may be assigned to him or her by the Board of Directors or the Chair. 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 Foundation and shall deposit all moneys and other valuable effects in the name and to the credit of the Foundation in such depositories as may be designated by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the Chair and the Board of Directors, when the Chair or Board of Directors so requires, an account of all his or her transactions as Treasurer and of the financial condition of the Foundation. Notwithstanding the foregoing, upon prior notice to the Board, the Treasurer may delegate and supervise any or all the foregoing duties and actions to a person or service provider retained by the Foundation.

### **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 Foundation.

## **ARTICLE VII NOTICES**

### **Section 7.1 Delivery**

Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by the Foundation under any provision of the DGCL, the Certificate of Incorporation, or these By-laws may be given in writing directed to the Member's mailing address (or by electronic transmission directed to the Member's electronic mail address, as applicable) as it appears on the records of the Foundation and shall be given (1) if mailed, when the notice is deposited in the US mail, postage prepaid, (2) if delivered by courier service, the earlier of when the notice is received or left at such Member's address or (3) if given by electronic mail, when directed to such Member's electronic mail address unless the Member has notified the Foundation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by subsection (e) of this Section. A notice by electronic mail must include a prominent legend that the communication is an important notice regarding the Foundation

Without limiting the manner by which notice otherwise may be given effectively to Members, but subject to subsection (e) of this Section, any notice to Members given by the Foundation under any provision of the DGCL, the Certificate of Incorporation, or these By-laws shall be effective if given by a form of electronic transmission consented to by the Members to whom the notice is given. Any such consent shall be revocable by the Member by written notice or electronic transmission to the Foundation

Notice given pursuant to subsection (b) of this Section shall be deemed given: (1) if by facsimile telecommunication, when directed to a number at which the Member has consented to receive notice; (2) 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; and (3) if by any other form of electronic transmission, when directed to the Member or Director

For purposes of these By-laws, (1) "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), 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, (2) "electronic mail" means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to

include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the Foundation who is available to assist with accessing such files and information) and (3) “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part” of the address) and a reference to an internet domain (commonly referred to as the “domain part” of the address), whether or not displayed, to which electronic mail can be sent or delivered

Notwithstanding the foregoing, a notice may not be given by an electronic transmission from and after the time that (1) the Foundation is unable to deliver by such electronic transmission two consecutive notices given by the Foundation and (2) such inability becomes known to the Secretary or an assistant secretary of the Foundation or other person responsible for the giving of notice, provided, however, the inadvertent failure to discover such inability shall not invalidate any meeting or other action

Without limiting the foregoing, the Foundation adopts electronic mail as its principal source of communication with its Members. Each Member acknowledges and agrees that the Foundation 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

An affidavit of the Secretary or an assistant secretary or of another agent of the Foundation that notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein

## **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. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any meeting needs to be specified in any written waiver or any waiver by electronic transmission.

# **ARTICLE VIII INDEMNIFICATION**

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

The Foundation 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 Foundation) by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation 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 Foundation, 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, by 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 Foundation, 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 Foundation**

The Foundation 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 Foundation 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 Foundation,



or is or was serving at the request of the Foundation 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 Foundation; provided, however, 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 Foundation 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 a 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 Foundation.

### **Section 8.5 Advance Payment**

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Foundation 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 Section 8.1 or 8.2 above to repay such amount if it shall ultimately be determined that he or she is not entitled to indemnification by the Foundation 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 Foundation's obligation to advance expenses (including attorney's fees).

### **Section 8.8 Insurance**

The Board of Directors may authorize the Foundation to purchase and maintain insurance on behalf of any person who is or was a Director, Officer, employee or agent of the Foundation, or is or was serving at the request of the Foundation 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 Foundation 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 Foundation 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 DGCL. 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 to fully permit indemnification and advancement of expenses from time to time permitted by law.

### **ARTICLE IX BOOKS AND RECORDS**

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

The Foundation 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, including their names, addresses, and the class of Membership held by each.

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

Minutes and any other books and records of the Foundation 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 Foundation 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 Foundation'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 Foundation. 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 Foundation 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 Financial Obligations each Member registered on its books, 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 DGCL.

## **ARTICLE X CERTAIN TRANSACTIONS**

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

No contract or transaction between the Foundation and one or more of its Directors or Officers, or between the Foundation 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 such Director or Officer (or other 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:

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 such Board Committee, and the Board of Directors or such 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

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

The contract or transaction is fair as to the Foundation 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 that 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 Foundation, may be authorized by the Board of Directors and shall be subject to the then current Foundation policy regarding the making of grants and/or contributions (as applicable) approved by the Board of Directors (the "Grant Policy") (if any). The Board of Directors may authorize any Officer or Officers, agent, or agents, in the name of and on behalf of the Foundation 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 Foundation, in the name and on behalf of the Foundation, 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. In the absence of any action by the Board of Directors to the contrary, the Chair, Vice Chair, and Executive Director shall be authorized to execute such contracts and instruments on behalf of the Foundation.

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

All checks, drafts and other orders for the payment of money out of the funds of the Foundation, and all notes or other evidences of indebtedness of the Foundation, shall be signed on behalf of the Foundation in such manner as shall from time to time be determined by resolution of the Board of Directors.

### **Section 11.4 Deposits**

Subject to the terms of the Signatory Policy (if any), the funds of the Foundation not otherwise employed shall be deposited from time to time to the order of the Foundation 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 Foundation to whom such power may from time to time be specifically delegated by the Board of Directors.

## **ARTICLE XII**

### **DISSOLUTION**

The Foundation may be dissolved upon Super Majority Vote of the Board of Directors, provided that (i) such dissolution is otherwise approved and effected in compliance with the then current requirements of the DGCL, and (ii) upon the dissolution of the organization, assets shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code, or shall be distributed to the federal government, for a public purpose. Any such assets not disposed of shall be disposed of by a court of competent jurisdiction in the county in which the principal office of the organization is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.”

## **ARTICLE XIII GENERAL PROVISIONS**

### **Section 13.1 Fiscal Year**

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

### **Section 13.2 Reserves**

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

### **Section 13.3 Proprietary Rights**

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 Foundation, including but not limited to Member meetings, Member Committee Meetings, Sub-Group meetings, Board of Directors meetings, meetings of Board Committees and sub-committees thereof, 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.

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 Foundation or to any other Member by reason of its Membership in or participation in the activities of the Foundation, except as may be provided in a separate written agreement.

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 Foundation.

### **Section 13.4 Form of Records**

Any records administered by or on behalf of the Foundation in the regular course of its business, including its Membership list, books of account, and minute books, may be kept on, or by means of, or be in the form of, any information storage device, method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases), provided that the records so kept can be converted into clearly legible paper form within a reasonable time.

The Foundation shall convert any records so kept into clearly legible paper form upon the request of any person entitled to inspect such records pursuant to any provision of the DGCL. When records are kept in such manner, a clearly legible paper form prepared from or by means of the information storage device, method or one or more electronic networks or databases (including one or more distributed electronic networks or databases) shall be valid and admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

### **Section 13.5 Document Form, Signature and Delivery**

Without limiting the way any act or transaction may be documented, or the way a document may be signed or delivered:

Any act or transaction contemplated or governed by the DGCL or the Certificate of Incorporation or these By-laws may be provided for in a document, and an electronic transmission shall be deemed the equivalent of a written document. “Document” means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.

Whenever the DGCL or the Certificate of Incorporation or these By-laws requires or permits a signature, the signature may be a manual, facsimile, conformed or electronic signature. “Electronic signature” means an electronic symbol or process that is attached to, or logically associated with, a document and executed or adopted by a person with an intent to authenticate or adopt the document.

Unless otherwise agreed between the sender and recipient, an electronic transmission shall be deemed delivered to a person for purposes of the DGCL and the Certificate of Incorporation and By-laws when it enters an information processing system that the person has designated for the purpose of receiving electronic transmissions of the type delivered, so long as the electronic transmission is in a form capable of being processed by that system and such person is able to retrieve the electronic transmission. An electronic transmission is delivered under this Section even if no person is aware of its receipt. Receipt of an electronic acknowledgement from an information processing system establishes that an electronic transmission was received but, by itself, does not establish that the content sent corresponds to the content received.

This provision shall not prohibit one or more persons from conducting a transaction in accordance with any electronic signature rules so long as the part or parts of the transaction that are governed by the DGCL are documented, signed, and delivered in accordance with this Section or otherwise in accordance with the DGCL. This Section shall apply solely for purposes of determining whether an act or transaction has been documented, and the document has been signed and delivered, in accordance with the DGCL, the Certificate of Incorporation and these By-laws.

## **ARTICLE XIV ANTITRUST COMPLIANCE**

### **Section 14.1 General**

The Foundation will conduct all its activities in conformance with all international, US 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 Executive Director shall consult legal counsel and seek legal review whenever necessary to insure that the activities of the Foundation are conducted in conformance with such laws.

### **Section 14.2 Availability of Intellectual Property**

It is the good faith objective of the Foundation (i) to make all Intellectual Property available as soon as its development and adoption by the Foundation is complete on the same terms to all Members who have not participated in the development or determination of such Intellectual Property as well as to all those Members who have participated, (ii) to make all such Intellectual Property available at the same point in time to all Members, and (iii) to make all such Intellectual Property available to all non-Members on fair and reasonable terms and conditions.

### **Section 14.3 No Obligation to Endorse**

No Member shall, by reason of its Membership or participation in the Foundation or otherwise, be obligated to license from the Foundation, use or endorse any Intellectual Property (as defined in Section 2.5) developed or endorsed by the Foundation, or to conform any of its products to any Specification or standard developed or adopted by the Foundation, nor shall any such Member be precluded from independently licensing, using or endorsing similar intellectual property, software, specifications or documentation developed by it or by others.

## **ARTICLE XV**

### **AMENDMENTS**

Except where such power is expressly limited by law, the Certificate of Incorporation or these By-laws as to any specific action, these By-laws may be altered, amended or repealed, and new By-laws may be adopted, in each case by an affirmative vote of (i) a Super Majority of the Board of Directors or (ii) a majority of Voting Members then in good standing in accordance with Section 3.8(c) of these By-laws, at any annual meeting of the Voting Members or regular meeting of the Board of Directors or at any special meeting of the Voting Members or of the Board of Directors, provided, however, that in the case of a regular or special meeting of Voting Members, notice of such alteration, amendment, repeal or adoption of new By-laws shall be contained in the notice of such meeting.

### **Comments**

If you have comments on this document please email [admin@owasp.com](mailto:admin@owasp.com).