

**FOURTH AMENDED AND RESTATED BYLAWS OF**

**PC GAMING ALLIANCE (“PCGA”)**

(An Oregon Nonprofit Corporation)

# TABLE OF CONTENTS

	Page
<b>ARTICLE 1: DEFINITIONS .....</b>	<b>1</b>
SECTION 1.1 AFFILIATE OR AFFILIATES.....	1
SECTION 1.2 BYLAWS.....	1
SECTION 1.3 CONFIDENTIAL INFORMATION .....	1
SECTION 1.4 CONTRIBUTOR .....	1
SECTION 1.5 CORPORATION .....	1
SECTION 1.6 EXECUTIVE DIRECTOR .....	1
SECTION 1.7 MAJORITY OF THE BOARD OF DIRECTORS.....	2
SECTION 1.8 MEMBER.....	2
SECTION 1.9 PROMOTER .....	2
SECTION 1.10 QUORUM.....	2
SECTION 1.11 SECRETARY .....	2
SECTION 1.12 SUPERMAJORITY OF THE BOARD OF DIRECTORS.....	2
<b>ARTICLE 2: OFFICES .....</b>	<b>2</b>
SECTION 2.1 PRINCIPAL OFFICE.....	2
SECTION 2.2 CHANGE OF ADDRESS .....	2
SECTION 2.3 OTHER OFFICES.....	2
SECTION 2.4 PURPOSE .....	3
SECTION 2.5 COMPLIANCE WITH ANTITRUST LAWS.....	3
<b>ARTICLE 3: NONPROFIT PURPOSES .....</b>	<b>3</b>
SECTION 3.1 IRC SECTION 501(c)(6) PURPOSES.....	3
SECTION 3.2 SPECIFIC OBJECTIVES AND PURPOSES.....	3
<b>ARTICLE 4: DIRECTORS .....</b>	<b>3</b>
SECTION 4.1 NUMBER.....	3
SECTION 4.2 POWERS.....	4
SECTION 4.3 DUTIES.....	4
SECTION 4.4 QUALIFICATION, APPOINTMENT AND DESIGNATION OF DIRECTORS.....	5
SECTION 4.5 INTENTIONALLY LEFT BLANK .....	6
SECTION 4.6 COMPENSATION.....	6
SECTION 4.7 PLACE OF MEETINGS .....	6
SECTION 4.8 ANNUAL MEETINGS.....	6
SECTION 4.9 SPECIAL MEETINGS.....	7
SECTION 4.10 NOTICE OF MEETINGS .....	7
SECTION 4.11 QUORUM FOR BOARD OF DIRECTOR MEETINGS .....	7
SECTION 4.12 BOARD ACTION.....	7
SECTION 4.13 VOTING PERCENTAGES.....	7
SECTION 4.14 CONDUCT OF MEETINGS.....	8
SECTION 4.15 VACANCIES; RESIGNATIONS .....	9
SECTION 4.16 NONLIABILITY OF DIRECTORS.....	10
SECTION 4.17 INDEMNIFICATION BY THE CORPORATION OF DIRECTORS AND OFFICERS ...	10
SECTION 4.18 INSURANCE FOR CORPORATE AGENTS.....	10
SECTION 4.19 BOARD ACTION WITHOUT A MEETING .....	10
<b>ARTICLE 5: OFFICERS.....</b>	<b>11</b>
SECTION 5.1 DESIGNATION OF OFFICERS.....	11
SECTION 5.2 ELECTION AND TERM OF OFFICE.....	11
SECTION 5.3 REMOVAL AND RESIGNATION .....	11
SECTION 5.4 VACANCIES .....	11

SECTION 5.5	DUTIES OF PRESIDENT.....	11
SECTION 5.6	DUTIES OF VICE PRESIDENT .....	12
SECTION 5.7	DUTIES OF SECRETARY .....	12
SECTION 5.8	DUTIES OF TREASURER.....	13
SECTION 5.9	EXECUTIVE DIRECTOR.....	13
SECTION 5.10	COMPENSATION.....	14
<b>ARTICLE 6: WORK GROUPS.....</b>		<b>14</b>
SECTION 6.1	WORK GROUPS.....	14
SECTION 6.2	COMPOSITION AND ACTIONS OF WORK GROUPS .....	15
SECTION 6.3	MEETINGS AND ACTION OF WORK GROUPS .....	15
<b>ARTICLE 7: EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS.....</b>		<b>15</b>
SECTION 7.1	EXECUTION OF INSTRUMENTS.....	15
SECTION 7.2	CHECKS AND NOTES .....	15
SECTION 7.3	DEPOSITS .....	16
<b>ARTICLE 8: CORPORATE RECORDS AND REPORTS.....</b>		<b>16</b>
SECTION 8.1	MAINTENANCE OF CORPORATE RECORDS .....	16
SECTION 8.2	INSPECTION RIGHTS .....	16
SECTION 8.3	RIGHT TO COPY AND MAKE EXTRACTS .....	17
SECTION 8.4	PERIODIC REPORT .....	17
<b>ARTICLE 9: IRC 501(C)(6) TAX EXEMPTION PROVISIONS.....</b>		<b>17</b>
SECTION 9.1	LIMITATION ON ACTIVITIES .....	17
SECTION 9.2	PROHIBITION AGAINST PRIVATE INUREMENT .....	17
SECTION 9.3	DISTRIBUTION OF ASSETS.....	17
<b>ARTICLE 10: AMENDMENT OF BYLAWS.....</b>		<b>17</b>
<b>ARTICLE 11: CONSTRUCTION AND TERMS .....</b>		<b>18</b>
<b>ARTICLE 12: MEMBERSHIP PROVISIONS .....</b>		<b>18</b>
SECTION 12.1	DETERMINATION AND RIGHTS OF MEMBERS .....	18
SECTION 12.2	QUALIFICATIONS FOR MEMBERSHIP .....	18
SECTION 12.3	ADMISSION TO MEMBERSHIP .....	19
SECTION 12.4	FEES AND DUES.....	19
SECTION 12.5	NUMBER OF MEMBERS.....	19
SECTION 12.6	MEMBERSHIP ROLL.....	19
SECTION 12.7	NONLIABILITY OF MEMBERS .....	19
SECTION 12.8	NONTRANSFERABILITY OF MEMBERSHIPS .....	19
SECTION 12.9	TERMINATION OF MEMBERSHIP.....	19
<b>ARTICLE 13: MEETINGS OF MEMBERS .....</b>		<b>20</b>
SECTION 13.1	PLACE OF MEETINGS .....	20
SECTION 13.2	REGULAR MEETINGS .....	21
SECTION 13.3	SPECIAL MEETINGS OF MEMBERS.....	21
SECTION 13.4	NOTICE OF MEETINGS .....	21
SECTION 13.5	QUORUM FOR MEETINGS OF MEMBERS.....	21
SECTION 13.6	MEMBER ACTION.....	22
SECTION 13.7	MEMBER ACTION AT MEETINGS.....	22
SECTION 13.8	ACTION BY WRITTEN BALLOT .....	22
SECTION 13.9	CONDUCT OF MEETINGS.....	23
<b>ARTICLE 14: MEMBERSHIP CLASSIFICATIONS.....</b>		<b>23</b>
SECTION 14.1	PROMOTERS.....	23
SECTION 14.2	CONTRIBUTORS .....	24

<b>ARTICLE 15: CONFIDENTIALITY</b> .....	<b>25</b>
SECTION 15.1    CONFIDENTIAL INFORMATION .....	25
SECTION 15.2    OBLIGATION OF CONFIDENTIALITY .....	25
SECTION 15.3    RESIDUALS .....	25
SECTION 15.4    SURVIVAL.....	25
<b>ARTICLE 16: INTELLECTUAL PROPERTY RIGHTS POLICY</b> .....	<b>26</b>
SECTION 16.1    NO PATENT LICENSE .....	26
SECTION 16.2    COPYRIGHTS .....	26
SECTION 16.3    TRADEMARKS .....	26
<b>ARTICLE 17: GENERAL</b> .....	<b>26</b>
SECTION 17.1    WAIVER OF WARRANTIES .....	26
SECTION 17.2    LIMITATION OF LIABILITY .....	26
SECTION 17.3    SURVIVAL.....	27

# PC GAMING ALLIANCE

(An Oregon Nonprofit Corporation)

## ARTICLE 1: DEFINITIONS

### SECTION 1.1 AFFILIATE OR AFFILIATES

“**Affiliate**” or “**Affiliates**” shall mean any entity now or hereafter that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes of this definition control means direct or indirect ownership of or the right to exercise (a) more than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) more than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity; provided, however, that in each case such entity shall be deemed to be an Affiliate only so long as such ownership or control exists and is more than fifty percent (50%).

### SECTION 1.2 BYLAWS

“**Bylaws**” shall mean these Fourth Amended and Restated Bylaws, which replace in their entirety any all previous bylaws and amended and restated bylaws of the Corporation.

### SECTION 1.3 CONFIDENTIAL INFORMATION

“**Confidential Information**” shall mean solely the Draft Guideline and discussions and written material relating to the subjects set forth in Section 15.1 of these Bylaws. Notwithstanding the foregoing, Confidential Information shall not include any information that is (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party without reference or access to any Confidential Information; or (e) generally made available to third parties by the disclosing party without restriction on disclosure.

### SECTION 1.4 CONTRIBUTOR

“**Contributor**” shall mean all Members of the Corporation who so qualify in accordance with the provisions of Article 12 and Section 14.2, below.

### SECTION 1.5 CORPORATION

“**Corporation**” shall mean the PC Gaming Alliance.

### SECTION 1.6 EXECUTIVE DIRECTOR

“**Executive Director**” shall mean an officer of the Corporation whose duties and responsibilities are set forth in Section 5.9, below. The Executive Director shall be an individual who is not a member of the Board of Directors.

## **SECTION 1.7 MAJORITY OF THE BOARD OF DIRECTORS**

“**Majority of the Board of Directors**” shall mean a majority of the total number of Directors.

## **SECTION 1.8 MEMBER**

“**Member**” shall mean a general reference to all Promoters and Contributors who have so qualified for such classifications pursuant to the provision of these Bylaws. Member shall not mean a "member" as that term is defined under ORS 65.001(28), since the Corporation shall not be deemed to have members as defined under the Oregon Nonprofit Corporation Act.

## **SECTION 1.9 PROMOTER**

“**Promoter**” shall mean all Members of the Corporation who so qualify in accordance with the provisions of Article 12 and Section 14.1, below.

## **SECTION 1.10 QUORUM**

“**Quorum**” shall mean greater than two thirds (2/3) of the members of the Board of Directors of the Corporation.

## **SECTION 1.11 SECRETARY**

“**Secretary**” shall mean the officer described in Sections 5.1 and 5.7.

## **SECTION 1.12 SUPERMAJORITY OF THE BOARD OF DIRECTORS**

“**Supermajority of the Board of Directors**” shall mean two-thirds of the total number of Directors.

# **ARTICLE 2: OFFICES**

## **SECTION 2.1 PRINCIPAL OFFICE**

The principal office of the Corporation shall be located at 1211 SW Fifth Avenue, Suite 1800, Portland, Oregon 97204, attn: Timothy F. Haslach.

## **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, which 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 PURPOSE**

The purpose of the Corporation shall be to provide an open forum where members cooperate in developing and promoting solutions that drive the PC gaming industry forward. The Corporation will encourage the exchange of information and views to promote PC gaming and will also engage in promotional activity designed to grow PC gaming among members of the group, related industries and consumers.

## **SECTION 2.5 COMPLIANCE WITH ANTITRUST LAWS**

Each of the Members of the Corporation is committed to fostering competition in the development of products and services and other Corporation deliverables proposed to be developed are intended to promote such competition. Each Party 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.

Accordingly, each Member hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under this Agreement 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 standards and to license its patent rights to third parties, including without limitation, to enable competing technologies and standards.

## **ARTICLE 3: NONPROFIT PURPOSES**

### **SECTION 3.1 IRC 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, 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.

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

The Corporation is a nonprofit corporation formed for the specific objectives and purposes stated in Section 2.4.

## **ARTICLE 4: DIRECTORS**

### **SECTION 4.1 NUMBER**

Subject to Section 4.15, the Board of Directors (referred to herein individually as “Directors”) shall consist of: (1) eight individuals who will be designated by certain specified Promoters (the “Designated Directors”); and (2) zero to three individuals who will be elected or, if applicable, designated in accordance with Section 4.4(b) (the “Elected Directors”). The number of Directors may be changed by a Supermajority of the Board of Directors.

## **SECTION 4.2 POWERS**

Subject to the provisions of the Oregon Nonprofit Corporation Act and any limitations in the Articles 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 DUTIES**

It shall be the duty of the Board of Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- (c) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- (d) Meet at such times and places as required by these Bylaws;
- (e) Register their addresses with the Executive Director of the Corporation, which addresses will be the addresses to which notices of meetings will be given in accordance with Section 4.11;
- (f) Consider for approval or rejection any public statement, press release or similar public materials concerning the business of the Corporation prior to making such materials public;
- (g) Consider 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;
- (h) Establish annual dues for the various classes of Members and to determine the rights and obligations for each class of Member not otherwise stated in these Bylaws;
- (i) Make a yearly evaluation of the Corporation's fulfillment of its purposes as set forth in the Bylaws and the need to continue the existence of this entity going forward;
- (j) Establish or revise membership classes and the rights and privileges of the various classes of Members;
- (k) Adopt and modify these Bylaws;
- (l) Such other duties as are customary for the Directors of a nonprofit business league organized under Section 501(c)(6) of the Internal Revenue Code; and

(m) Adopt such procedures to govern operations of Work Groups (or if necessary, for specific Work Groups) (“Work Group Procedures” or “Work Group Specific Procedures,” as applicable).

#### **SECTION 4.4 QUALIFICATION, APPOINTMENT AND DESIGNATION OF DIRECTORS**

(a) Directors must be employees of a Promoter. No Promoter may have more than one (1) representative designated to the Board of Directors. For purposes of these Bylaws, a Member and its Affiliates shall be deemed as one (1) Member.

(b) Subject to Section 4.15, each of the following Promoters (the “Designating Promoters”) will designate one individual to be a Designated Director: (1) Acer Incorporated; (2) Activision, Inc.; (3) Advanced Micro Devices Inc.; (4) Dell Inc.; (5) Epic Games, Inc.; (6) Intel Corporation; (7) Microsoft Corporation; and (8) NVIDIA Corporation. If the Corporation has fewer than three Elected Directors at any time before the date of an annual meeting of the Board of Directors (“Annual Meeting”), then, subject to Section 4.15, each of the other Promoters (the “Nominating Promoters”) will be entitled to designate an individual to be an Elected Director, but only for a term that will expire on the date of the next Annual Meeting. At each Annual Meeting, each Designating Promoter will designate one individual to be a Designated Director. The terms of the Designated Directors will begin immediately upon designation at the Annual Meeting. Before each Annual Meeting, each Nominating Promoter will be entitled to nominate one individual to be an Elected Director. If the number of nominated individuals at the Annual Meeting is less than or equal to the number of positions available for Elected Directors, then each nominated individual will become an Elected Director at the Annual Meeting, and the terms of such Elected Directors will begin contemporaneously with the terms of the Designated Directors designated at the Annual Meeting. If the number of nominated individuals at the Annual Meeting is greater than the number of positions available for Elected Directors, then the Elected Directors will be elected by a plurality of the votes cast by the Designated Directors designated at the Annual Meeting. If two or more nominated individuals receive the same number of votes for the final Elected Director position, then another election will take place for such final position, with the individuals who received the same number of votes as the only candidates for such final position. The terms of such Elected Directors will begin upon their election. Designated Directors do not have the right to cumulate their votes for Elected Directors. Except as otherwise provided in these Bylaws, the term of each Director shall be one year. A Promoter will be entitled to designate or nominate an individual to be a Designated Director or an Elected Director only if the individual is an employee of the Promoter.

(c) Each Promoter represented on the Board of Directors may also appoint an alternate representative to serve on the Board on a temporary basis should its designated representative become unavailable. Even if a designated representative to the Board of Directors is present, that Director’s alternate representatives may also attend meetings of the Board of Directors, but in a nonvoting capacity only. A represented Promoter, by providing written notice to the Board of Directors, may replace an individual appointed by that Promoter to the Board of Directors at any time either with its designated alternate representative or another designated representative of the Promoter.

(d) Subject to Sections 4.4(c) and 4.15, if a vacancy on the Board of Directors occurs because of the death, resignation, or removal of a Director, and if the Promoter that employed the former Director whose death, resignation, or removal caused the vacancy remains a Promoter, then such Promoter may designate a Director to fill the vacancy, provided that the Promoter may not re-designate any former Director that was removed by the Board of Directors.

(e) Promoters wishing to have a representative designated to or nominated for the Board of Directors must provide written notice of the same to the Secretary not later than thirty (30) days prior to the quarterly meeting of the Board of Directors immediately preceding the next Annual Meeting of the Board of Directors. Such notice shall include certification that that Promoter or its representative has actively participated in the activities of the Corporation during the prior twelve (12) month period. The notice shall also include evidence that: (1) the Promoter possesses and will contribute sufficient technical and marketing resources to invest in the Corporation's activities; and (2) the Promoter is committed to the purpose of this Corporation; and (3) the Promoter has experience participating in industry specification and standards development organizations.

(f) A Director may be removed for cause by a Supermajority of the Board of Directors. A Director may be removed for any reason by the Director's Promoter organization. A Director will be automatically removed if the Director's Promoter organization terminates its membership as a Promoter.

#### **SECTION 4.5 INTENTIONALLY LEFT BLANK**

#### **SECTION 4.6 COMPENSATION**

Directors shall serve without compensation by the Corporation.

Nothing herein contained shall be construed to preclude any Director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefore so long as such compensation is approved by a unanimous vote of the disinterested Directors.

#### **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, by audio, document or videoconferencing techniques or any other means or combinations thereof permitted under ORS Chapter 65, as that chapter may, from time to time, be amended.

#### **SECTION 4.8 ANNUAL MEETINGS**

Annual Meetings of the Board of Directors shall be held prior to the Annual Meeting of the Members. The appointment of the new members of the Board of Directors shall be completed at the Annual Meeting of the Board of Directors.

## **SECTION 4.9 SPECIAL MEETINGS**

Special 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 Oregon to call Special Meetings of the Board.

## **SECTION 4.10 NOTICE OF MEETINGS**

Unless otherwise provided by the Articles 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 sixty (60) days' prior notice to each Director.

(b) Special Meetings. The Executive Director of the Corporation shall give at least fourteen (14) 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, provided that the Director to be contacted shall acknowledge personal receipt of the electronic message by a return electronic message or telephone call within three (3) business days of the first notification. If notification is provided by mail (including the U.S. Postal Service, express courier services and the like), such notice shall be deemed to be delivered when deposited in the mail addressed to the Director at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by 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 ORS Chapter 65, as that chapter may, from time to time, be amended.

## **SECTION 4.11 QUORUM FOR BOARD OF DIRECTOR MEETINGS**

In the absence of a continued Quorum at any meeting of the Board of Directors already in progress, a majority of the members of the Board of Directors present may adjourn the meeting.

## **SECTION 4.12 BOARD ACTION**

Unless the Articles of Incorporation, these Bylaws or provisions of law require a greater or lesser voting percentage or different rules for approval of a matter by the Board, every act or decision done or made upon a majority vote of the Directors present at a meeting duly held at which a Quorum is present is the act of the Board of Directors.

## **SECTION 4.13 VOTING PERCENTAGES**

The following voting percentages shall be required for any motion, act or decision to be a valid motion, act or decision of the Board of Directors:

<b>Matter to be Voted On</b>	<b>Number of Affirmative Votes Required</b>
(a) General business matters	Majority of the Board of Directors
(b) Election of Work Group	Majority of the Board of Directors
(c) Election of Officers	Majority of the Board of Directors
(d) Admission of Promoters	Supermajority of the Board of Directors
(e) Removal of Directors for Cause	Supermajority of the Board of Directors
(f) Removal of Officers	Supermajority of the Board of Directors
(g) Amendment to Bylaws or Membership Agreements	Supermajority of the Board of Directors
(h) Changing the Corporation Purpose	Supermajority of the Board of Directors
(i) Approving the initiation and completion of work items	Three quarters (3/4) vote of the Board of Directors
(j) Dissolution or merger of the Corporation, or transfer of all or substantially all of the Corporation's assets to another standards body	Supermajority of the Board of Directors
(k) Issue general Corporation press releases	Supermajority of the Board of Directors. Press releases which name or relate to a Member product must be approved by such Member.

#### **SECTION 4.14 CONDUCT OF MEETINGS**

Meetings of the Board of Directors shall be presided over by the Chairman of the Board of Directors, elected at the Annual Meeting of the Board of Directors to serve until the next Annual Meeting of the Board of Directors or until their successors are elected, or in his or her absence, by an acting Chairperson chosen by a majority of the Directors present at that meeting. The initial Chairman of the Board of Directors shall be Rick Carini. The Secretary of the Corporation shall act as secretary of all meetings of the Board, 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, the Promoter's alternate representative to the Board of Directors attending a Board of Directors' meeting may 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 provided that notice of the proxy is received by the Board of Directors at least twenty four (24) hours in advance of the Board of Directors meeting.

Meetings shall be governed by such procedures as may be approved from time to time by the Board, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with provisions of law. Where practical, the Board of Directors will model its procedures and actions on Robert's Rules of Order, although the Board shall not be required to adopt Robert's Rules of Order in its entirety or any part thereof.

Directors may participate in a regular or Special 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 this Section 4.14 constitutes presence in person at such meeting.

#### **SECTION 4.15 VACANCIES; RESIGNATIONS**

Vacancies on the Board of Directors shall exist: (1) whenever the number of authorized Directors is increased; (2) whenever a Director dies or resigns from the Board of Directors; (3) whenever a Director resigns from or is terminated from employment by the Promoter employing the Director at the time of the Director's designation or election; and (4) whenever a Director is removed from the Board of Directors.

Any Director may resign effective upon giving written notice to the President, the Secretary, Executive Director or the Board of Directors. No Director may resign if the Corporation would then be left without a duly appointed Director or Directors in charge of its affairs, except upon notice to the Office of the Attorney General or other appropriate agency of the State of Oregon.

The Member employing the resigning or removed Director may replace that Director with another employee or representative by providing the Secretary or Executive Director with written notice of the same within thirty (30) days after the effective date of the Director's resignation, termination or removal. Except as otherwise herein provided, a Director shall be conclusively deemed to resign if the Director's employment with the Member is for any reason terminated. A person appointed to fill a vacancy on the Board 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.

In the event that two (2) or more Directors' Member organizations are merged or a Director's Member organization is acquired by another Director's Member organization, the resulting or acquiring Member shall designate which of the Directors is to remain on the Board and the other Director or Directors will be removed from the Board immediately upon the closing of the acquisition or merger.

If a Designating Promoter terminates its membership as a Promoter, whether by being merged into or acquired by another Member, or for any other reason, then: (1) the Designated Director that was designated by the Designating Promoter will be automatically removed as a Director; (2) the Board of Directors will promptly hold a meeting to elect a Promoter that is not already a Designating Promoter to be a replacement Designating Promoter; provided however, that if the Corporation has only one Promoter that is not already a Designating Promoter, then that Promoter will automatically become the replacement Designating Promoter; provided further however, that if the Corporation does not have any Promoter that is not already a Designating Promoter, then the Corporation will continue with fewer than eight Designated Directors and fewer than eight Designating Promoters, until such time as the Corporation once again has eight or more Promoters, at which time the procedures set forth in this clause (2) and in clause (3) of this sentence will apply; and (3) the replacement Designating Promoter will promptly designate one individual to be the replacement Designated Director. A replacement

Designating Promoter that is elected in accordance with clause (2) of the previous sentence will be elected by a plurality of the votes cast by the Board of Directors. If two or more replacement Designating Promoters receive the same number of votes, then another election will take place, with the Designating Promoters who received the same number of votes as the only candidates.

#### **SECTION 4.16 NONLIABILITY OF DIRECTORS**

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

#### **SECTION 4.17 INDEMNIFICATION BY THE CORPORATION OF DIRECTORS AND OFFICERS**

To the fullest extent permitted by the Oregon Nonprofit Corporation Act, 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 4.17 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 4.18 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 any particular agent of the Corporation (including a Director, officer, employee or other agent 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 Articles of Incorporation, these Bylaws or provisions of law.

#### **SECTION 4.19 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 members of the Board consent in writing (including a writing in an electronic medium) to that action. Such action by signed consent shall have the same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

## **ARTICLE 5: OFFICERS**

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

The officers of the Corporation shall be a President, a Secretary, and a Treasurer. The Corporation may also have an Executive Director. 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 or representative of a Promoter.

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

Officers shall be elected by majority 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 two-thirds vote of the total number of disinterested Directors. An officer who is also an employee of a Promoter shall automatically be removed if the employer of the officer 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 of any officer of the Corporation.

### **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 President, such vacancy may be filled temporarily by appointment by the President until such time as the Board shall fill the vacancy. Vacancies occurring in offices of officers appointed at the discretion of the Board may or may not be filled as the Board 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 Articles 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 of the corporation, or any subset thereof.

Except as otherwise expressly provided by law, by the Articles 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**

The Board of Directors may elect a Vice President. If elected, the Vice President shall, in the absence of the President, or in the event of the President's inability or unreasonable refusal to act, 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. If elected, the Vice President shall have other powers and perform such other duties as may be prescribed by law, the Articles 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:

(a) Certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date.

(b) Keep at the principal office of the Corporation or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of Work Groups of Directors and of Members, recording therein the time and place of holding, whether regular or special, 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.

(c) See that all notices are duly given in accordance with the provisions of these Bylaws or as required by law. Advise the Members in writing of any designation of Directors.

(d) Be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these Bylaws, to duly executed documents of the Corporation.

(e) Keep at the principal office of the Corporation a membership 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 membership book together with the date on which such membership ceased.

(f) Exhibit at all reasonable times to any Member of the Corporation, or to the Member's agent or attorney, on request therefor, the Bylaws, the membership book, and the minutes of the proceedings of the Members of the Corporation.

(g) In general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles 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:

(a) 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.

(b) Receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever.

(c) 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.

(d) 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.

(e) 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 therefor.

(f) 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.

(g) Prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports.

(h) In general, perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles 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, if any, shall perform such undertakings as are necessary to manage the day-to-day needs of the Corporation, including:

(a) Scheduling and setting up meetings.

(b) Facilitating communication between Members, including providing timely notices of meetings.

(c) Acting as the liaison to other consortia or associations with which the Corporation may choose to associate.

(d) 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.

(e) Receiving and processing membership agreements, and executing them on behalf of the Corporation.

(f) In general, performing all duties incident to the office of Executive Director and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the Board of Directors.

(g) The Executive Director may engage third parties to undertake such activities, provided that the Executive Director enters into appropriate contracts protective of the Corporation, and ensures compliance with terms and conditions of this Agreement 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, unless the Board of Directors authorizes compensation.

Nothing herein contained shall be construed to preclude any officer from serving the Corporation in any other capacity as an agent, employee, or otherwise, and receiving compensation therefor as long as such compensation is approved by a unanimous vote of the disinterested Directors.

## **ARTICLE 6: WORK GROUPS**

### **SECTION 6.1 WORK GROUPS**

The Corporation shall have such work groups as may from time to time be designated upon vote of the Board of Directors (“Work Group(s)”). The Board of Directors shall appoint the chairperson of each Work Group, including replacements. All provisions of this Article 6 which apply to Work Groups shall also apply to any subgroups formed thereunder.

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 as amended from time to time. Upon establishment of a Work Group, that Work Group may, through its chairperson, propose specific procedures to govern that Work Group; such specific procedures subject to ratification by the Board of Directors. Work Group specific procedures not otherwise incorporated into the general Work Groups Procedures adopted by the Board of Directors shall apply only to the Work Groups proposing such procedures.

## **SECTION 6.2 COMPOSITION AND ACTIONS OF WORK GROUPS**

Only Promoters may act as voting members of Work Groups or subgroups thereunder. Any Promoter may propose to the Board of Directors the establishment of one (1) or more Work Groups. 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 the initial and any replacement chairperson of such Work Group from among the Promoters. The Board of Directors shall provide timely notice of the formation and chairperson of each Work Group to all Promoters and Contributors as well as the then-current Work Group Procedures that will govern its actions. Without limiting the powers of the Board of Directors as stated in the Bylaws, all output of Work Groups, and modifications thereto, shall be subject to review and approval of the Board of Directors in accordance with the Bylaws prior to publication or disclosure by the Corporation and before becoming binding upon the Corporation and the Members.

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

### **SECTION 6.3.1 RECORD OF ACTIVITIES**

Work Groups shall elect a secretary or other person to document and record the Work Group's activities.

### **SECTION 6.3.2 MEETINGS**

Work Groups shall hold regular meetings on a schedule as determined by such Work Group and approved by the Board of Directors. The noticing of meetings of the Work Group and the governance thereof shall be subject to the Work Group Procedures or Work Group Specific Procedures adopted by the Board of Directors.

### **SECTION 6.3.3 REMOVAL FROM WORK GROUPS**

The then-current Work Group Procedures or Work Group Specific Procedures shall govern the removal of any member of a Work Group.

## **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 Fifty Thousand Dollars (\$50,000) cumulative in any quarterly period may be signed by the President, Treasurer or Executive Director. Checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness equal to or in excess of Fifty Thousand Dollars (\$50,000), shall require the signatures of two (2) or more of the above-listed officers and a special resolution of the Board of Directors.

### **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:

(a) Minutes of all meetings of the Board of Directors, all meetings of Work Groups of the Board of Directors and all meetings of Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies;

(b) 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;

(c) A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership; and

(d) A copy of the Corporation's Articles of Incorporation and Bylaws as amended to date, which shall be open to inspection by the Members, if any, of the Corporation at all reasonable times during office hours.

### **SECTION 8.2 INSPECTION RIGHTS**

Subject to such confidentiality and nondisclosure requirements as the Board 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 Articles 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 shall cause any annual or periodic report required under the laws of the State of Oregon to be prepared and delivered to an office of the State of Oregon or to the Members, if any, of this Corporation, to be so prepared and delivered within the time limits set by law.

## **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 (the "Code").

### **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 for exemption provided by Oregon Revised Statute Section 317.080, as shall at the time qualify either (i) as exempt from Federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c)(6) of the Code, or (ii) as a corporation or other organization to which contributions are deductible under Section 170(c)(1) of the Code.

## **ARTICLE 10: AMENDMENT OF BYLAWS**

Except where otherwise provided for in individual Articles herein, these Bylaws and any amendments thereto, may only be altered, amended, or repealed, and new Bylaws adopted, upon a Supermajority of the Board of Directors.

## **ARTICLE 11: CONSTRUCTION AND TERMS**

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

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.

All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation, Articles of Organization, Certificate of Incorporation, Organizational Charter, Corporate Charter, or other founding document of the Corporation filed with an office of the State of Oregon and used to establish the legal existence of the Corporation.

All references in these Bylaws to a section or sections of the Code shall be to such sections of the Internal Revenue Code of 1986, as amended from time to time, or to corresponding provisions of any future federal tax code.

## **ARTICLE 12: MEMBERSHIP 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 of Members set forth in Article 1, 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. Except as expressly provided in or authorized by the applicable Membership Agreements, the Articles of Incorporation, the Bylaws of this Corporation, or provisions of law, all Members shall have the rights, privileges, restrictions and conditions established by resolution of the Board of Directors.

Among the benefits generally to be afforded to the Members are the right to attend meetings of the General Membership of the Corporation and access to the general Member portions of the Corporation's web site.

### **SECTION 12.2 QUALIFICATIONS FOR MEMBERSHIP**

The qualifications for membership in this Corporation are as follows: Membership is available to any entity that is supportive of this Corporation's purposes, and not otherwise prohibited by treaty, law or regulation from abiding by the terms of these Bylaws and who pays the then-current annual dues applicable its Membership Classification. "Supportive of this Corporation's purposes" means that the Member is supportive of the Corporation's activities and that the Member will not intentionally sabotage the Corporation's efforts. Nothing herein shall be construed as limiting a Member's right to design, develop, manufacture, acquire or market competitive products and services, and conduct its business in whatever way it chooses.

### **SECTION 12.3 ADMISSION TO MEMBERSHIP**

Applicants qualified under Section 12.2, above, shall be admitted to membership upon affirmation of the Articles of Incorporation and these Bylaws, the execution of a Membership Agreement, payment of the applicable annual dues as specified on the Membership Agreement, and (in the case of applicants at the Promoter level) approval by a Supermajority of the Board of Directors.

### **SECTION 12.4 FEES AND DUES**

The annual dues payable to the Corporation by each class of Members 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 upon execution of the Membership Agreement according to terms defined in the Membership Agreement. Thereafter, yearly dues shall be due and payable as specified on the Membership Agreement.

### **SECTION 12.5 NUMBER OF MEMBERS**

There is no limit on the number of Members the Corporation may admit.

### **SECTION 12.6 MEMBERSHIP ROLL**

The Corporation shall keep a membership roll containing the name and address, including electronic mail addresses, of each Member, the date upon which the applicant became a Member, and the name of one (1) individual from each Member organization who shall serve as a primary contact for the Corporation, receive all correspondence and information, distribute this information within his or her organization, and vote on all issues submitted to a vote of the Members. Termination of the membership of any Member shall be recorded in the roll, together with the date of termination of such membership. Such roll shall be kept at the Corporation's principal office. Membership in the Corporation is a matter of public record; however, membership lists will not be sold or otherwise be made available to third parties.

### **SECTION 12.7 NONLIABILITY OF MEMBERS**

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

### **SECTION 12.8 NONTRANSFERABILITY OF MEMBERSHIPS**

All rights of membership cease upon the Member's dissolution. No membership may be assigned without the prior written consent of the Corporation, and any purported assignment without such written approval shall be null and void.

### **SECTION 12.9 TERMINATION OF MEMBERSHIP**

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

(1) Upon a failure to initiate or renew membership by paying dues on or before their due date, such termination to be effective sixty (60) days after a written notification of delinquency is given personally or mailed to such Member by the Secretary or Executive Director of the Corporation; provided however that a Supermajority of the Board of Directors may terminate the membership of a Member before the expiration of the sixty (60) day period if, during the sixty (60) day period: (i) the Member fails to actively participate in the activities of the Corporation; or (ii) the Member materially fails to perform the Member's obligations to the Corporation, based on any commitments that the Member made to the Corporation. A Member may avoid termination under this Section 12.9(1): (i) by paying the amount of delinquent dues within the sixty (60) day period following the Member's receipt of the written notification of delinquency; (ii) by continuing to actively participate in the activities of the Corporation during the sixty (60) day period; and (iii) by continuing to perform the Member's obligations to the Corporation during the sixty (60) day period, based on any commitments that the Member made to the Corporation.

(2) Upon written notice from a Member to the Board of Directors indicating the Member's desire to terminate its membership in the Corporation; provided, however, that all obligations of the Member to the Corporation incurred prior to the date of termination shall survive such termination.

(3) Upon unanimous vote of all Directors other than the Director facing termination of Membership, 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.

In the event that two (2) or more Member organizations are merged or a Member organization is acquired by another Member organization, the resulting entity shall have only one (1) Membership and one (1) vote in all Membership votes thereafter. The former voting Member may, however, upon written notice to the Board, be permitted to continue attendance at Meetings on a nonvoting basis and be provided with notices thereof.

All rights of a Member in the Corporation shall cease on termination of membership as herein provided. A Member terminated from the Corporation shall not receive any refund of dues already paid for the current dues period.

## **ARTICLE 13: MEETINGS OF MEMBERS**

### **SECTION 13.1 PLACE OF MEETINGS**

Meetings of Members shall be designated from time to time by resolution of the Board of Directors, which resolution shall specify the meeting place and time. At the discretion of the Board of Directors, meetings may be held in person or by audio, document or videoconferencing techniques, or any combination thereof, or any other means permitted under ORS Chapter 65, as that chapter may, from time to time, be amended.

## **SECTION 13.2 REGULAR MEETINGS**

The Annual Meetings of Members shall be held for the purpose of conducting such business as may come before the meeting. Each of the Annual Meetings of the Members shall be deemed a regular meeting.

Other regular meetings of the Members shall be held on dates and at times to be determined by the Board of Directors.

## **SECTION 13.3 SPECIAL MEETINGS OF MEMBERS**

Special 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.

## **SECTION 13.4 NOTICE OF MEETINGS**

Unless otherwise provided by the Articles of Incorporation, these Bylaws, or provisions of law, notice stating the place, day and hour of the Annual Meeting shall be provided not less than sixty (60) days in advance thereof. In the case of a Special Meeting, notice, specifying the purpose or purposes for which the meeting is called, shall be provided not less than fourteen (14) 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, provided that the Member to be contacted shall acknowledge personal receipt of the electronic message by a return electronic message or telephone call within three (3) working days of the first notification. If notification is provided by mail (including the U.S. Postal Service and express courier services and the like), such notice shall be deemed to be delivered when deposited in the mail addressed to the Director at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by 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 ORS Chapter 65, as that chapter 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 Articles of Incorporation, these Bylaws, or the law of the State of Oregon, 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 13.5 QUORUM FOR MEETINGS OF MEMBERS**

Those Members present at a properly noticed meeting of the Members shall constitute a quorum.

## **SECTION 13.6 MEMBER ACTION**

Every act or decision done or made by a majority of Members present at a properly noticed Annual Meeting of Members is the act of the Members. Member action shall be advisory in nature only and shall not be binding upon the Board of Directors.

## **SECTION 13.7 MEMBER ACTION AT MEETINGS**

Each Member shall have one (1) vote on each matter submitted to a vote by the Members. The Member's designated employee shall do all voting in person, not by proxy. Voting at meetings shall be by a show of hands if held in person, or by voice ballot if held by audio, videoconferencing or teleconferencing, unless otherwise required. Results of all ballots shall duly be distributed to all Members by the Executive Director within thirty (30) days of each ballot. Written confirmation of any and all ballots shall be maintained with the Corporation's minutes.

## **SECTION 13.8 ACTION BY WRITTEN BALLOT**

Except as otherwise provided under the Articles of Incorporation, these Bylaws, or provisions of law, any action which may be taken at any regular or Special Meeting of Members may be taken without a meeting or in conjunction with a meeting if the Corporation distributes a written ballot to each Members entitled to a vote.

The ballot shall:

- (1) Set forth the proposed action and/or slate of candidates;
- (2) Provide an opportunity to select individuals or specify approval or disapproval of each proposal or a vote for candidates, as appropriate;
- (3) Indicate the number of responses needed and the percentage of approvals necessary to pass the measure submitted; and
- (4) Specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford Members a reasonable time within which to return the ballots to the Corporation.

Ballots shall be mailed or delivered in the manner required for giving notice of membership meetings as specified in these Bylaws.

Approval of action by written ballot shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum, if required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the action at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

## **SECTION 13.9 CONDUCT OF MEETINGS**

Meetings of Members shall be presided over by the President of the Corporation or, in his or her absence, by the Vice President of the Corporation or, in the absence of all of these persons, by a Chairperson designated by the Board of Directors, or in the absence of a timely designation by the Board of Directors, by a majority of the Members present. The Secretary of the Corporation shall act as Secretary of all meetings of Members, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

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 Articles of Incorporation, these Bylaws, or with provisions of law.

## **ARTICLE 14: MEMBERSHIP CLASSIFICATIONS**

### **SECTION 14.1 PROMOTERS**

The Corporation shall have Promoters. Promoters may be added only upon a Supermajority of the Board of Directors. Such invitation shall be determined by the Board of Directors based on fair and objective criteria and may generally include a requirement that a prospective Promoter have a substantial economic or technical interest or impact in the Corporation's success in fulfilling its stated purpose, that it have a good faith intent to build and launch products compliant with the guidelines, if any, and that it will publicly declare its Membership in the Corporation. All Promoters must execute a Membership Agreement and pay the fees called for thereon for Promoters. Once accepted, all Promoters shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Members. In addition to the rights granted to Contributors, Promoters shall be granted the specific additional rights stated in this Section 14.1.

(1) The right to be listed (with a hyperlink to the Promoter's web site) as a Promoter on the Corporation's web site;

(2) The right to access any and all portions of the Corporation's web site. This right also includes the ability to participate in Promoter-only discussion groups and other mailing lists of the Corporation (subject to any privacy policy the Corporation may adopt);

(3) The right to access Member-only confidential information and internal working documents of the Corporation as well as Promoter-only confidential information such as selected business issues and discussions related to the evaluation and review process for Draft Guidelines determined by the Board of Directors as accessible to Promoters only;

(4) The right to designate Directors to the Board of Directors and nominate Directors for the Board of Directors, subject to and in accordance with Section 4.4(b) and the other provisions of these Bylaws;

(5) The right to be listed as a Promoter in all press releases of the Corporation;

(6) The right to chair Work Groups (subject to Board of Director appointment pursuant to Section 6.2 hereof), and the right to participate in the activities of Work Groups; and

(7) Pre-release access to certain documents of the Corporation and the right to attend and participate in certification workshops conducted prior to release of a Final Guideline by the Corporation.

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Promoters may be entitled.

## **SECTION 14.2 CONTRIBUTORS**

The Corporation shall have Contributors who must execute a Membership Agreement and pay the fees called for thereon for Contributors. Contributors shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Members. In addition, Contributors shall be granted the specific additional rights stated in this Section 14.2.

(1) The right to be listed (with a hyperlink to the Contributor's web site) as a Contributor on the Corporation's web site;

(2) The right to actively participate in the Corporation's marketing and promotional activities;

(3) Access to the Member-only discussion groups and the Corporation's mailing lists (subject to any privacy policy that the Corporation may adopt);

(4) Access to any applicable certification testing and relevant certification testing tools at discounted rates, provided that the compliance testing and testing tools cannot be sold, bartered, traded or otherwise transferred (except to Affiliates) in any way;

(5) The right to attend and participate in training seminars;

(6) The right to list certified products on the Corporation's website;

(7) Subject to procedures as may be adopted by the Board of Directors, the right to use the Corporation's name and/or logo in connection with certified products;

(8) Access to forum to provide feedback regarding Corporation activities;

(9) Access to any completed research reports obtained or created by the Corporation, and access to certain released documents of the Corporation;

(10) Access to any group buys or site licenses for future utilities obtained by the Corporation for Members;

(11) Access to an annual written report published by the Corporation for Members only regarding the state of the PC gaming industry; and

(12) The right to participate in the activities of Work Groups (but not the right to chair Work Groups or act as voting members of Work Groups).

In addition to the foregoing, the Board of Directors may from time to time approve other benefits to which all Contributors may be entitled.

## **ARTICLE 15: CONFIDENTIALITY**

### **SECTION 15.1 CONFIDENTIAL INFORMATION**

The Members intend to engage in discussions and create written materials regarding activities of the Corporation, certification testing, governance, marketing and other business of the Corporation. These discussions and materials shall be deemed Confidential Information of the Corporation.

### **SECTION 15.2 OBLIGATION OF CONFIDENTIALITY**

The Members will maintain Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances, and will neither use, disclose nor copy such Confidential Information, except as necessary for its affiliates, directors, officers, agents, attorneys and contractors or employees with a need to know, for the purpose of creating the new initiative (“Representatives”). Any copies of writings containing Confidential Information which are made or disclosed in this manner will be marked “confidential,” “proprietary” or with a similar legend. Unless the Members agree otherwise, this obligation of confidentiality will expire three (3) years from the date of the original disclosure.

### **SECTION 15.3 RESIDUALS**

As a result of engaging in the development effort referred to in these Bylaws, and the receipt of Confidential Information, each Party may increase or enhance the knowledge or experience, and the written expression thereof, retained without reference to printed or electronic documents) in the memories of each of its Representatives. Notwithstanding anything else to the contrary in these Bylaws, each Representative may use and disclose such knowledge, experience, and the written expression thereof in its business. With respect to the knowledge and experience and written expression thereof, no Party or its Representatives, shall (1) intentionally memorize it so as to reduce it to an intangible form for the purpose of creating or using a residual, or (2) avoid the Party’s obligation to maintain its confidentiality merely by having a person commit such item to memory so as to reduce it to an intangible form. No Party who owns Confidential Information shall acquire or be entitled to any rights in the business endeavor of any other Party that may use such knowledge or experience, or the written expression thereof, nor any right to compensation related to another Party’s use of such knowledge, experience or written expression.

### **SECTION 15.4 SURVIVAL**

This Article 15 shall survive any termination of membership pursuant to Section 12.9 or any other reason.

## **ARTICLE 16: INTELLECTUAL PROPERTY RIGHTS POLICY**

### **SECTION 16.1 NO PATENT LICENSE**

The Members agree no patent license, immunity or other right is granted under these Bylaws by any Member or its Affiliates to any other Member or their Affiliates or to the Corporation, either directly or by implication, estoppel or otherwise.

### **SECTION 16.2 COPYRIGHTS**

The Members grant to the Corporation a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the original works of authorship contributed to the Corporation solely for the purposes of developing, publishing and distributing materials on behalf of the Corporation, as well as products based on such documents.

### **SECTION 16.3 TRADEMARKS**

In the event that the Corporation proposes to adopt any other name or logo as a trademark or trade name (collectively, "Trademarks"), the Corporation shall notify the Members in writing (including a writing in electronic medium) of the proposal within forty five (45) days of such adoption. The Corporation shall take such steps as the Board of Directors deems necessary and proper to protect its rights under such Trademarks adopted for use by the Corporation. In furtherance thereof, the Board of Directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the Members. Each Member agrees that unless it provides written notice to the Executive Director of that Member's challenge to the proposed Trademark prior to its adoption by the Board of Directors, then the Member and its Affiliates shall not assert against the Corporation or any Member any trademark or trade name rights they may have or thereafter possess in the proposed Trademarks. Each Member agrees not to use or adopt any trademarks for any product, service, guideline or specification likely to cause confusion with any of the Trademarks adopted by the Corporation, unless agreed by the Board of Directors.

## **ARTICLE 17: GENERAL**

### **SECTION 17.1 WAIVER OF WARRANTIES**

ALL DOCUMENTS OF THE CORPORATION AND ANY INTELLECTUAL PROPERTY OF THE CORPORATION THEREIN IS 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 17.2 LIMITATION OF LIABILITY**

IN NO EVENT SHALL CORPORATION BE LIABLE TO ITS MEMBERS, OR ITS MEMBERS LIABLE TO CORPORATION, IN CONNECTION WITH THE CONTRACTUAL

NATURE OF THESE BYLAWS OR ANY INTELLECTUAL PROPERTY RIGHTS AGREEMENTS OF CORPORATION, FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, EVEN IF THE CORPORATION OR A MEMBER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE CORPORATION AND EACH MEMBER RELEASES EACH OTHER MEMBER, ALL OF EACH OTHER MEMBER'S AFFILIATES, EMPLOYEES, AND AGENTS, AND THE CORPORATION FROM ANY SUCH DAMAGES.

### **SECTION 17.3 SURVIVAL**

This Article 17 shall survive any termination of membership pursuant to Section 12.9 or any other reason.

\* \* \*

CERTIFICATE OF SECRETARY

I hereby certify:

That I am the duly appointed Secretary of the PC Gaming Alliance, an Oregon Nonprofit Corporation; and

The foregoing Fourth Amended and Restated Bylaws constitute the Fourth Amended and Restated Bylaws of the Corporation as duly adopted by the Board of Directors of said Corporation on October 14, 2009.

IN WITNESS WHEREOF, I have hereunder subscribed my name this 14th day of October, 2009.

Christian Svensson

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Signature