



Apdex Alliance Inc. Bylaws

January 2007

BYLAWS OF

APDEX ALLIANCE, INC.

ARTICLE I

GENERAL PROVISIONS

Section 1. Name: The name of the Corporation shall be Apdex Alliance , Inc.

Section 2. Location: The principal office of the Corporation shall initially be located at the place set forth in the Articles of Organization of the Corporation. The Management Board may establish other offices and places of business in Massachusetts or elsewhere, and shall designate a Resident Agent, as necessary.

Section 3. Fiscal Year: the fiscal year of the Corporation shall, unless otherwise decided by the Management Board, end on December 31st of each year,

Section 4. The purpose of the Corporation is to carry out the Mission through the Programs, with participation of the Members and Officers, as defined herein.

ARTICLE II
MISSION

Section 1. The MISSION of this Corporation is to develop and promote within the Information Technology (IT) Industry open standards that define standardized methods to report, benchmark, and track application performance.

Section 2. The Corporation shall promote and increase among IT users, public, private, institutional, educational and corporate, knowledge of the benefits from and facilities for standardization that enhances and advances networking and interoperability of IT products and services.

Section 3. The Corporation shall provide opportunities and an environment for networking, support, education, program development and exchange of ideas between IT users, public, private, institutional, educational and corporate.

Section 4. The Corporation initially shall design and establish, through the collaboration of a group of companies (members) and governmental agencies, educational institutions, and other not-for-profit entities (associate members), an application performance index called Apdex.

Section 5. As the collaborating members perceive additional needs the Corporation shall design and establish additional standardized methods to report, benchmark, and track IT application performance.

Section 6 . The Corporation shall employ collaboration to ensure that the methodologies have broad applicability to both measurement and enterprise organizations.

Section 7 . Members of the Industry may include the reporting features into their products and assist enterprises to make full use of this capability as a foundation for continuous process improvement in managing the performance of their IT infrastructure. The Corporation strives to ensure that enterprises seeking to align IT with business practice regard these standards as the norm for measuring application performance.

Section 8 . The Corporation shall provide certification for members' products to ensure compliance with the specification(s). Such certification shall endeavor to validate and enhance public, private, educational, institutional and governmental confidence in IT standards for reporting, benchmarking, and tracking application performance. As necessary, the Corporation may facilitate interoperability tests or comparative reporting trials among various vendor products that claim to conform to the Apdex methodology. Such tests or trials may be private or public.

Section 9 . The Corporation shall develop, along with the standards, requirements documents and guidelines, conduct research and development, technology development, including the creation of intellectual property, programs for certification and conformance with standards, accreditation, and education.

Section 10 . The Corporation shall conduct recurring education, outreach, fund raising and development necessary or convenient to effect the above purposes of the Corporation and any other purposes permitted under Massachusetts General Laws, Chapter 180, and any other lawful activity not in violation of the Corporation's non-profit and tax-exempt status.

Section 11. Tax-Exemption Provisions: Notwithstanding any other provisions of these Bylaws, the Corporation is organized exclusively for the purposes and activities which may be undertaken by an organization described in Section 501(c)(6) of the Internal Revenue Code of 1986, as the same may be amended or modified or replaced by any future United States internal revenue law (the "Code").The Corporation shall not carry on any other activities not permitted to be carried on by a corporation exempt from federal income tax under Section 501 (c)(6) or by a non-profit corporation organized under Massachusetts General Laws, Chapter 180, or in violation of any other chapter of the General Laws of the Commonwealth.

No part of the net earnings or other assets of the Corporation shall inure to the benefit of any individual. The property of this Corporation is irrevocably dedicated to the purposes listed above and 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 set forth in the corporate Articles and these bylaws. Upon liquidation, dissolution or abandonment of the Corporation, after providing for the debts and obligations thereof, the remaining assets will not inure to the benefit of, or be distributable to any its members, officers or other private persons, but will be used or distributed according to the provisions of Article XV Section 2.

ARTICLE III PROGRAMS

Section 1. The Corporation shall function with planned programs which shall include:

- a. the development of SPECIFICATIONS, and all revisions, versions and extensions thereof adopted by the Corporation;
- b. promoting the use of FINAL SPECIFICATIONS;
- c. liaisons with standards development organizations ("Industry Body") to adopt and/or further develop the FINAL SPECIFICATIONS;
- d. the preparation and distribution of educational and scientific materials;
- e. the establishment of liaison and cooperation with private and governmental groups establishing SPECIFICATIONS for the use in industry;
- f. promoting a better understanding of the SPECIFICATIONS in industry and government;
- g. working closely with user groups to communicate the benefits and applications of the SPECIFICATIONS, and;
- h. maintaining a membership representative of the industry and through internal committees as necessary to provide an orderly and efficient method of accomplishing the Mission, carrying out the programs and achieving the stated objectives of the Corporation.

ARTICLE IV MEMBERSHIP

Section 1. **MEMBERSHIP.** Membership in the Corporation shall be open to persons from all countries of the world that qualify under Section 2 of this Article. Provisions for each level of membership will be defined in the Corporation's Membership Application. For the purposes of these Bylaws, "person" means any individual, proprietorship, partnership, firm, association, corporation, division of a corporation or other business or legal entity organized under the laws of any jurisdiction. MEMBERS are defined collectively as Contributing Members, Board Members, Supporting Members, and Associate Members. In the event a MEMBER is other than an individual such MEMBER shall designate one or more MEMBER REPRESENTATIVES to represent the MEMBER in the Corporation. Only Contributing Members may vote in any action of the Corporation, or the Management Board, or any Committee.

Section 2. **QUALIFICATIONS.**

A. Contributing Membership shall comprise those accepted by the MANAGEMENT BOARD who have applied for such membership, have executed the Membership Application form and paid the membership fee (Contributing Member). Application for Contributing Membership shall be open to any person who expresses a willingness to support the FINAL SPECIFICATIONS and activities of the Corporation and a desire to have its name identified as such on the Corporation's website and other materials of the Corporation. Contributing Members will have an opportunity to review DRAFT SPECIFICATIONS, and will have voting privileges in any Technical and/or Marketing Working Groups in which such Contributing Member participates. Contributing Members shall be able to participate in all MEMBERS meetings. Each Contributing Member must actively participate in at least one Technical Working Group per year. Contributing Members can: recommend the creation of a new Technical Working Group to the MANAGEMENT BOARD; propose a chair for a Technical Working Group to the TECHNICAL WORKING GROUP or Executive Director; use the Corporation Member logo on their website (under appropriate usage guidelines approved and implemented by the MANAGEMENT BOARD).

NetForecast shall retain a perpetual, no-fee Contributing Membership for its role as founder and inventor of Apdex.

B. Management Board Membership – The Contributing Members nominate and elect a Board of Directors (the MANAGEMENT BOARD) from among their membership at the annual meeting of the Corporation. The Board Member companies will designate a specific person who will be that company's "Representative to the Management Board." This individual is expected to serve for a one year term. The Management Board is responsible for governance, operational policy, business development, membership recruitment, engaging contractors to work for the Corporation, defining membership categories, and setting membership fees. The Board defines working groups and approves their charters. The Board defines the document approval process that the TWG must follow to ratify an official Corporation public document. The Board has final authority for accepting the work of a working group and publishing a document. The Board is initially limited to five Contributing Members. The Board or Members can choose to change this number at a later date. There is no additional fee to be a Board Member. However, Contributing Member Representatives to the Board are expected to contribute time and expenses associated with Board duties and meetings.

- C. Supporting Membership** - A Supporting Member is an individual who is interested in learning more about one or more standards or applying one or more standards to his/her environment. Supporting Members receive educational material that is not publicly available on the Corporation web site. A Supporting Member may attend some of the periodic tutorials on how to use one or more standards that will be presented by the Corporation. Supporting Members are invited to attend an annual users' meeting. They will also be invited to give presentations about their experiences with or suggestions to improve one or more standards at the users' meeting. Attendance at the users' meeting is included in the membership (but not travel expenses). The annual fee for Supporting Membership shall be established by the Management Board on an annual basis.
- D. Associate Membership** - shall be open to governmental agencies, educational institutions, and other not-for-profit entities that have completed the application forms, satisfied the objective membership criteria for participation in the Corporation; executed a copy of the Associate Membership Agreement and subject to the approval of the MANAGEMENT BOARD. There shall be no membership fee for Associate Members.

Section 3. **APPLICATION.** Application for membership in the Corporation shall be extended by the MANAGEMENT BOARD and made in writing on the required form as established by the Corporation.

Section 4. **MEMBERSHIP ELIGIBILITY.** It is a condition of continuing membership in the Corporation that all dues and assessments of a MEMBER shall be paid. The Board shall have the right to suspend or terminate membership of any MEMBER if its membership dues assessments remain unpaid for more than 30 days after written notice by the Corporation's Secretary. If requested by the MANAGEMENT BOARD at any time, a MEMBER shall be required to submit to the Secretary such statements as may be determined necessary to support continuing membership eligibility appropriate to the MEMBER'S membership level.

Section 5. **Technical Working Group.**

(a) The MANAGEMENT BOARD shall establish a standing committee called the TECHNICAL WORKING GROUP and its charter.

(b) (i) The TECHNICAL WORKING GROUP shall be responsible for coordinating all technical activities of the Corporation, including all SPECIFICATION writing programs. The TECHNICAL WORKING GROUP shall make recommendations regarding the Corporation's technical programs to the MANAGEMENT BOARD for final approval.

(ii) The membership of the TECHNICAL WORKING GROUP shall comprise a technical representative from each Contributing Member. Each Contributing Member shall have one vote on the TECHNICAL WORKING GROUP. Each representative shall be responsible to pay their own meeting expenses. All meetings of

the TECHNICAL WORKING GROUP and its Technical Working Groups shall be open only to Contributing Members and Management Board Members. The TECHNICAL WORKING GROUP shall create such Technical Working Groups as are needed for the completion of Corporation objectives. The initial Chairperson of the TECHNICAL WORKING GROUP shall be appointed by the MANAGEMENT BOARD, and thereafter the MANAGEMENT BOARD shall appoint a chairperson from those person(s) recommended by the TECHNICAL WORKING GROUP. The initial chairpersons of each Technical Working Group shall be designated by the TECHNICAL WORKING GROUP and shall be charged with establishing objectives and time frames for completion thereof. The REVIEW BOARD shall approve the objectives and time frames prior to the working group commencing work pursuant thereto.

ARTICLE V TERMINATION OF MEMBERSHIP

Section 1. **REASONS FOR SUSPENSION OR EXPULSION.** Any MEMBER or MEMBER REPRESENTATIVE may be suspended or expelled from membership from the Corporation by a two-thirds (2/3) vote of the MANAGEMENT BOARD for any of the following reasons:

(a) Failure to conform to these Bylaws and any other agreements executed between the Corporation and its MEMBERS;

(b) For any conduct unbecoming of a MEMBER or MEMBER REPRESENTATIVE of the Corporation, or calculated to bring the Corporation into disrepute;

(c) Failure to continue to meet Membership or representative eligibility requirements; or

(d) Failure to pay membership fees or assessments.

Section 2. **PROCEDURE FOR SUSPENSION OR EXPULSION.** Upon being advised that an event has happened which would constitute grounds for suspension or expulsion of any MEMBER or MEMBER REPRESENTATIVE under Section 1 of this Article, the MANAGEMENT BOARD may schedule a meeting of the Board at which to hold a hearing and a vote to suspend or expel such MEMBER. The notice of such meeting shall be sent no less than ten (10) days prior to the meeting and shall set forth the reasons for suspension or expulsion. After a fair and reasonable hearing the Board shall establish an effective date for suspension or expulsion, if any, upon a vote of two-thirds (2/3) of the MANAGEMENT BOARD. Such vote shall be convened utilizing confidential ballots, results of which shall be reported in summary such that individual votes shall not be disclosed. Such suspended or expelled MEMBER may appeal such suspension or expulsion by notifying the Secretary within ten days of being advised in writing of such MANAGEMENT BOARD action. Upon receipt of such notice, the entire MANAGEMENT BOARD shall schedule a hearing at its next meeting to hear such appeal under such procedures as it shall determine in advance thereof.

Section 3. **SUSPENDED AND EXPELLED MEMBERS.** Any MEMBER or MEMBER REPRESENTATIVE suspended from the Corporation under this Article shall have no claim against, or vote in the Corporation until such suspension has expired. Any

MEMBER expelled from the Corporation under this Article shall have no further interest in the property of, or claim against, the Corporation, and shall be entitled to re-apply for membership only through reconsideration by the MANAGEMENT BOARD as set forth in Section 2 of this Article and upon payment in full of all obligations to the Corporation outstanding at the time of expulsion; provided however that the license agreement with such MEMBER shall remain in full force and effect as to such MEMBER'S intellectual property rights as set forth in greater detail therein. Any MEMBER expelled from the Corporation shall be entitled to receive a prorated refund of any membership fees paid minus any outstanding balances owed to the Corporation by such MEMBER.

Section 4. **RESIGNATION. (A)** Resignations of MEMBERS shall be submitted in writing to the Secretary. Except as hereinafter stated, a resignation shall not be retroactively effective but shall be effective on the date received. All normal and regular dues of a resigning MEMBER shall accrue and be payable to the Corporation. A MEMBER shall not be liable for any special assessments imposed after the effective date of its resignation; **(B)** Any MEMBER shall be permitted to resign from the Corporation at any time by giving written notice of its intent to terminate its participation but shall still be bound to its obligations under Article IX with respect to FINAL DRAFT SPECIFICATIONS that have been circulated to the MEMBERS by the MANAGEMENT BOARD unless such resignation occurs during the IPR REVIEW PERIOD. Any MEMBER that resigns from the Corporation shall not have any licenses granted to such MEMBER pursuant to Article IX be prejudiced as a result of such resignation. Upon its withdrawal, any fees owed by a resigning MEMBER prior to such MEMBER'S resignation shall become immediately due and payable. Any Member whose membership fees lapse may be deemed to have resigned if such Member fails to correct the lapse within a reasonable time after having been properly invoiced for such fees and notified of termination of its membership.

ARTICLE VI MEETINGS AND QUORUMS

Section 1. **ANNUAL MEETING.** The Corporation shall hold an annual meeting of its MEMBERS (the "Annual Meeting" or "All Participants Meeting") during each calendar year, the time and place of which shall be determined by the MANAGEMENT BOARD for the introduction of nominated Board Member candidates and appointed officers, to elect the Board of Directors, and for the transaction of any other business placed on the agenda for the meeting by the MANAGEMENT BOARD. Notice of such meeting and the agenda shall be sent by the Secretary to each MEMBER of record, in good standing, at least thirty (30) days in advance of the day specified for the meeting, including a statement of the day, time and place of the meeting and information as to the subject matter to be considered at the meeting. The MANAGEMENT BOARD may invite any other person to such meeting as it deems necessary and appropriate.

Section 2. **SPECIAL MEETINGS.** Special meetings of the Board Members, any MANAGEMENT BOARD committees or the TECHNICAL WORKING GROUP may be called by the Chairperson or by the MANAGEMENT BOARD at a place designated in the notice of such meeting ("Special Meeting"), or may be held via electronic mail. Special meetings shall be called by the Secretary upon the request of not less than thirty three (33%) percent of the MEMBERS of the respective body wishing to call the Special Meeting . Notice of such Special Meeting shall be sent at least three (3) days before but

not more than forty-five (45) days before said Special Meeting date, unless prior notice is waived by unanimous consent of the Members entitled to vote at such meeting. No special meeting of the Board may be held without notice. [MGL c. 156B § 56] Special Meetings may be held by telephone as set forth in Section 6 of this Article. Votes may be recorded via telephone conference, by e-mail, by letter ballot signed by the MEMBER or MEMBER REPRESENTATIVE of the MANAGEMENT BOARD, any MANAGEMENT BOARD committee or the TECHNICAL WORKING GROUP attending the Special Meeting and sent by facsimile within three (3) working days to the Corporation. A quorum of Members entitled to vote at the meeting shall be required to constitute a valid vote at a Special Meeting, and a majority of such quorum shall be necessary to authorize any action under consideration.

Section 3. QUORUM, VOTING AND PROXIES. The presence in person by MEMBERS, MEMBER REPRESENTATIVES or by proxy of a majority of the MEMBERS having voting rights pursuant to these Bylaws ("Voting Members") at any Meeting shall be necessary to constitute a quorum for the transaction of business, unless a larger number is required by law to take any action on the agenda. Once a quorum at a meeting has been established, the continued presence of a quorum is presumed to exist only until the chair or any other member notices that a quorum is no longer present. If the chair notices the absence of a quorum, he or she should declare this fact, at least before taking any vote or stating the question on any new motion. Any member noticing the apparent absence of a quorum can and should make a *Point of Order* to that effect whenever another person is not speaking.

All Voting Members shall each have one vote on matters relating to each committee or working group on which such MEMBER participates. Each Voting Member shall have only one vote regardless of the number of MEMBER REPRESENTATIVES who may be present at the meeting, except as set forth in Article VII , Section 1. Each Voting Member may attend by proxy, which shall be in writing or facsimile received by the Secretary prior to the noticed time for the meeting or submitted at the time of the meeting by the MEMBER REPRESENTATIVES. Each proxy shall be valid only for the meeting for which it is submitted, provided that no proxy shall be valid for more than three consecutive working days. No proxy shall be valid for voting at a meeting of the Board, except where the Board has called a special meeting via email and the form of the email proxy conforms to the requirements of such meeting. If any vote requires more than a simple majority vote of the Board, email proxies may not account for more than a simple majority of those entitled to vote unless there is consent of the required number of votes.

Section 4. PROCEDURES. If, after any meeting has been duly called, it is found by the Chairperson of the meeting that an insufficient number will be present to constitute a quorum, the Secretary may, with the consent of the Chairperson (or other clerk of the meeting), establish a new date and place for the meeting, and a new notice shall be sent by Chairperson at least three days in advance of the date of the meeting. The Chairperson shall chair all meetings of the MANAGEMENT BOARD. However, any action that may be taken by the Members at a meeting may be taken without a meeting if all Members eligible to vote on the action consent to the action in writing and the consents are filed with the records of the meeting. [MGL c. 156B § 43]

Section 5. MINUTES. At all meetings of the MEMBERS of the Corporation, the MANAGEMENT BOARD or the TECHNICAL WORKING GROUP, or other committees

that may be established, a record of the proceedings shall be preserved as the minutes of the meeting, subject to approval by the participants.

Section 6. **REMOTE MEETINGS.** MEMBERS or Board Members, as the case may be, may participate in meetings by conference telephone or similar communications equipment by means of which all parties participating in the meeting can hear each other at the same time and participate by such means. [MGL c. 156B § 59] All such meetings shall commence by a roll call identifying each participating party and their affiliations, and each such person shall identify when they are leaving the conference call and any other person who becomes a party to the call.

Section 7. **GUESTS.** Attendance at meetings shall be limited to MEMBERS and guests invited by the Corporation.

ARTICLE VII MANAGEMENT BOARD

Section 1. **BOARD MEMBERS.** The MANAGEMENT BOARD of the Corporation shall be comprised of Contributing Members elected by the Contributing Membership to serve on the Management Board of the Corporation, whereby each Contributing Member elected shall be afforded one (1) vote on the MANAGEMENT BOARD. The specific election process shall be determined and approved by the MANAGEMENT BOARD. The Chairperson shall be appointed from the membership of the Board then he shall have only one Board vote. The MANAGEMENT BOARD shall be limited to five (5) Contributing Members. The MANAGEMENT BOARD may change this number at a later date upon approval by a vote of 2/3 of the Contributing Members eligible to vote at a meeting called for the purpose.

Section 2. **MEETINGS.** The MANAGEMENT BOARD shall meet during the time set for the Annual Meeting and such other times as determined by the MANAGEMENT BOARD, but not less frequently than twice annually. Each Board Member shall be responsible to pay his own meeting expenses.

Section 3. ACTION OF BOARD MEMBERS.

(a) The direction, property, business and all affairs of the Corporation shall be managed by its MANAGEMENT BOARD. Except as otherwise provided by law, the Board Members may, at the request of the Chairman, take any action or adopt any resolution under such procedures as may be adopted from time to time by the MANAGEMENT BOARD. Such action or resolution shall be authorized, approved and adopted upon receiving the affirmative vote of at least a majority of the Board Members of the Corporation.

(b) The MANAGEMENT BOARD shall elect the officers from the Board Members at the annual meeting at which they are selected. Such election shall be by majority vote of those present at the meeting. The MANAGEMENT BOARD shall be responsible for establishing all rules and regulations, including quorum requirements for Committees and working groups

(c) The MANAGEMENT BOARD shall also elect the Corporation's Executive Director, who (if a Member of the Board) may also serve as the Chairperson

of the Board meetings; approve new member applications by a simple majority vote; and review the budget and financials with the Treasurer at least three times per year. If the Executive Director is retained as an independent contractor, and is not a Contributing Member, he or she may not have a vote in any corporate action unless the Board determines that such Executive Director is a Contributing Member (i.e., by express waiver of member fees in lieu of other significant contributions to, and participation with, the core purposes of the business league).

(d) Conflict of Interest may exist when the interests or activities of any Director, Officer or staff member may be seen as competing with the interests of the Corporation, or where such person derives a financial or other material gain as a result of a direct or indirect relationship (e.g., attorney, accountant, consultant). Any possible conflict of interest shall be disclosed to the Board or Executive Director by the person concerned. When a conflict of interest relates to a matter requiring action of the Board, the interested person shall call it to the attention of the Board and shall not vote on the matter, although the person shall be counted as part of any required quorum. Unless requested to remain present, the interested person shall retire from the room during final deliberation or decision regarding the matter under consideration, but shall provide the Board with all relevant information. The minutes of the meeting shall reflect the presence of a conflict and the absence of the interested person during the vote. Any doubt as to whether a conflict exists shall be resolved by vote of the Board, excluding the person concerning whose situation the doubt has arisen.

Section 4. **EMERGENCY PROVISIONS.** Notwithstanding any other provisions of law or these Bylaws, during any emergency period caused by war or any other national catastrophe or local disaster of sufficient severity to prevent the conduct and management of the business and affairs of the Corporation by its MANAGEMENT BOARD and officers as contemplated by the other provisions of these Bylaws, a majority of the available Board Members (or the sole such Board Member) who have not been rendered incapable of acting because of incapacity or the difficulty of communication or transportation to the place of meeting shall constitute a quorum for the sole purpose of electing Board Members to fill the resulting emergency vacancies; and a majority of the Board Members present at such a meeting may act to fill such vacancies or to reduce the size of the full MANAGEMENT BOARD or both. Board Members so elected shall serve until the absent Board Members are able to attend meetings or until the Contributing Members elect Board Members to succeed them. During such an emergency period, if the Board is unable to meet, action appropriate to the circumstances may be taken by such officers of the Corporation as may be present and able. Questions as to the existence of a national catastrophe or local disaster and the number of surviving persons capable of acting shall be conclusively determined at the time by the MANAGEMENT BOARD or the officers so acting.

Section 5. **RESIGNATIONS.** Any Board Member may resign by submitting to the Chairperson, with a copy to the Secretary, his resignation, which shall become effective upon its receipt by such officer or at any later time specified therein. Unless specified therein, the acceptance of any resignation shall not be necessary to make it effective.

Section 6. **VACANCIES IN THE BOARD.** Vacancies in the MANAGEMENT BOARD, including vacancies where a nominee has not commenced the term of office or who is unable to serve because of death, disability, withdrawal of his name, resignation or other cause, shall be filled within sixty (60) days by the Contributing Member whose

representative is unable to serve. The MANAGEMENT BOARD may, by a two-thirds vote of the remaining MANAGEMENT BOARD, declare any Board Member position vacant upon the failure, for any reason, of its incumbent to attend two consecutive meetings of the MANAGEMENT BOARD or to perform the duties of the office.

Section 7. **COMMITTEES OF THE BOARD.** It will be the responsibility of the MANAGEMENT BOARD to establish committees as deemed necessary by a majority vote. The MANAGEMENT BOARD may, at its discretion, choose to appoint itself in the stead of establishing or continuing any standing committee.

(a) **STANDING COMMITTEES.**

(i) The MANAGEMENT BOARD may create Standing Committees to oversee the various functions of the Corporation. The initial Standing Committees of the MANAGEMENT BOARD shall be:

A. TECHNICAL WORKING GROUP: The duties of the TECHNICAL WORKING GROUP are set forth in Article IV , Section 5(b) .

B. ADVISORY COMMITTEE: The Board invites industry thought leaders to serve on a special committee of the Board called the Advisory Committee. Advisory Committee provides outside input to the Board. The Advisory Committee is made up of enterprise volunteers who have significant experience in application performance measurement and management. These individuals provide critical input to the Corporation on technical issues and how to apply various standards within an IT organization. The Advisory Committee members shall enjoy all of the rights and privileges of a Contributing Member at no charge. However, this is not viewed as a corporate membership for the company where the Advisory Committee Representative may be employed.

(b) **ADDITIONAL STANDING OR TEMPORARY COMMITTEES.** Additional standing or temporary committees, consisting of one or more Board Members, may be appointed by the MANAGEMENT BOARD from time to time by vote of a majority of the Board Members present at any regular or Special Meeting. The MANAGEMENT BOARD may from time to time vest committees with such power and authority, subject to such conditions, as it may see fit. An Executive Committee may be elected by the MANAGEMENT BOARD to exercise all of the powers and authority of the MANAGEMENT BOARD during intervals between meetings of the MANAGEMENT BOARD.

(c) **REMOVAL; VACANCIES; ABSENCE OR DISQUALIFICATION.** The MANAGEMENT BOARD may remove Board Members from committees and fill vacancies, designate one or more Board Members as Alternate Board Members of any committee, which Alternate Board Members may replace any absent or disqualified Board Member at any meeting. In the event of the absence or disqualification of any Board Member of any committee, the Board Member or Members present at any meeting, whether or not he or they constitute a quorum, may unanimously appoint

another Board Member to act at the meeting in place of any such absent or disqualified Board Member.

(d) **ORGANIZATION; FINALITY OF ACTION.** All committees shall determine their own procedures and times and places of meeting, unless otherwise directed by the and subject to the approval of the MANAGEMENT BOARD. Any action taken by any committee shall be subject to approval, alteration or revocation by the MANAGEMENT BOARD; provided, however, that third parties shall not be prejudiced by such alteration or revocation.

ARTICLE VIII OFFICERS and Corporate Liability

Section 1. **OFFICERS AND TERMS.** Officers of the Corporation shall consist of: the Chairperson of the MANAGEMENT BOARD, an Executive Director (if such position is filled), a Treasurer, and a Secretary all of whom shall be elected by the MANAGEMENT BOARD. Each officer shall hold office for a term of one year or until his successor shall have been duly elected and qualified, or until his earlier death, removal or resignation. An officer may be removed by the Board, with or without cause, whenever in its judgment the best interests of the Corporation will be served. An officer may resign at any time by giving written notice to the Board or any other officer. A vacancy in any office may be filled for the unexpired term by action of the Board. One person may hold more than one office simultaneously.

Section 2. **CHAIRPERSON.** The Chairperson of the MANAGEMENT BOARD shall serve as the Executive Director until such time as an Executive Director is elected.

Section 3. **EXECUTIVE DIRECTOR.** The Executive Director may be elected by and serve at the will of the MANAGEMENT BOARD. The Executive Director shall be selected from either (i) a Founding Member, (ii) a Contributing Member, or (iii) an independent contractor. The Executive Director shall be the Secretary and Assistant Treasurer of the Corporation. In addition to his other duties, the Executive Director shall be charged with carrying out the policies, programs, orders and resolutions adopted or approved by the MANAGEMENT BOARD. The Executive Director shall be responsible for membership and relationships with MEMBERS. The Executive Director shall attend all meetings of the MEMBERS and the meetings of the MANAGEMENT BOARD. The Executive Director shall: be responsible for: (i) taking minutes of the Management Board, (ii) the day to day operations of the Corporation, including documenting issues of law, policy, accounting or taxes, (iii) approving Corporation marketing materials and communications, (iv) providing guidance to marketing support staff, (v) nominating MEMBERS to the marketing support staff, and (vi) nominating working group chairs, as necessary. The Executive Director shall also be responsible for keeping a membership list, and filing various official reports, as required, with the cooperation of the Treasurer. The Executive Director shall notify all MEMBERS of any amendments to these Bylaws. The Executive Director shall perform such other duties as requested by the MANAGEMENT BOARD. The Executive Director shall manage, supervise and exercise general powers concerning all the property, business and affairs of the Corporation, and shall have all powers and perform all duties incident to the office of secretary and any further powers and duties as from time to time may be prescribed by the MANAGEMENT BOARD.

Section 4. **TREASURER.** The Treasurer shall be the chief financial officer of the Corporation. The Treasurer shall be elected by, and report to, the MANAGEMENT BOARD. He shall collect the assessments from the MEMBERS as authorized and shall pay all expenses of the Corporation, subject to the general approval and direction of the MANAGEMENT BOARD. He shall collect and preserve all financial records as required by the Code and the Massachusetts General Laws. He shall prepare or oversee, the annual tax returns, and any other official applications, notifications, reports or returns, required by the Commonwealth of Massachusetts, the Internal Revenue Service, and other government agencies, and make them available to the public as required by law. He shall render to the MEMBERS a detailed statement showing the financial status of the Corporation annually and at such other times as may be directed by the MANAGEMENT BOARD. His accounts shall be audited from time to time as may be directed by the MANAGEMENT BOARD or by a Founding or Contributing Member; provided that no Founding or Contributing Member, whether an officer or not, shall have access to figures which would indicate the business of any other MEMBER of the Corporation. If required by the MANAGEMENT BOARD, the Treasurer shall give a good and sufficient bond in such sum as the MANAGEMENT BOARD may require as security for the faithful discharge of his duties. At the expiration of his term of office, the Treasurer shall deliver over to his successor, all books and other property of the Corporation in his possession.

Section 5. **Secretary.** The Secretary, perhaps in the person of the Executive Director, if any, shall be responsible for the taking of minutes of all meetings of the MANAGEMENT BOARD and for official correspondence, other duties as may be assigned by the Board or Executive Director, and all other duties lawfully required of a corporate secretary under these Bylaws. In particular, the Secretary shall be responsible for notification of Members of their required meetings, provide certification of Board actions, Bylaws and organizational documents, prepare and file the required annual report to the Secretary of the Commonwealth [MGL c.180 s.26A], and maintain copies of all official corporate records (or attested copies) at a designated office within the Commonwealth for inspection by the Members. The Secretary of record for the Corporation shall be a resident of the Commonwealth unless the corporation shall have a duly appointed resident agent. [MGL c.180 s.6A]

Section 6. Execution of Papers. Except as the Board may authorize otherwise, all deeds, leases, transfers, contracts, bonds, notes, checks, drafts and other obligations made, accepted or endorsed by the Corporation shall be signed by the Executive Director or the Treasurer.

Section 7. Exculpation. *No director or officer shall be personally liable to the corporation for monetary damages for breach of fiduciary duty as a director or officer notwithstanding any provision of law imposing such liability; provide, however, that the liability of a director or officer, to the extent that such liability is imposed by applicable law, shall not be eliminated (1) for any breach of the director's or officer's duty of loyalty to the corporation, (2) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, or (3) for any transaction from which the director or officer derived an improper personal benefit. The directors and officers shall not be personally liable for any debt, liability or obligation of the corporation. No amendment or repeal shall deprive a director or officer of this benefit for acts or omissions prior to amendment.*

Section 8. Indemnification of Officers and Directors.

The Corporation shall, within the confines of the Articles of Organization, as provided in these Bylaws, or in any agreement authorized by the Corporation, indemnify its officers, directors, employees or agents, including former officers, directors, employees or agents (each a "Person"); provided, however, that such Person had acted in good faith in the reasonable belief that such action was in the best interest of the Corporation, and in the event the matter involves criminal charge, that such Person had no reasonable cause to believe that his conduct was unlawful.

The Corporation may make any other indemnification which shall be provided for by these Bylaws (i.e., by amendment), by agreement, by vote of corporate members or directors, or otherwise, and this article shall not exclude any other right to which such person may be lawfully entitled.

The Corporation shall advance or promptly reimburse, upon request of any Person entitled to indemnification hereunder, all expenses, including attorneys' fees actually and reasonably incurred in defending any action or proceeding, in advance of the final disposition thereof, upon receipt of a written undertaking by or on behalf of such Person to repay such amount which is found to be in excess of the amount for which such Person is ultimately entitled. For the purpose of payment, "Person" shall be deemed to include the lawful executor, administrator, heir, successor or assignee of a person who was otherwise a Person, as defined above during the alleged event giving rise to the action, suit or other proceeding.

The Corporation shall have the power to purchase and maintain insurance on behalf of any Person against any liability incurred by him in any such capacity, or arising out of his status as such, whether or not the Corporation would have the power to indemnify him against such liability.

The Corporation shall provide no indemnification with respect to any matter settled or compromised pursuant to a consent decree or otherwise unless such settlement or compromise shall have been approved as in the best interests of the Corporation, after notice that indemnification is involved, by (1) a disinterested majority of the Board or (2) if there are no disinterested directors, by independent legal counsel representing the Corporation and appointed by a majority of the directors then in office.

ARTICLE IX INTELLECTUAL PROPERTY RIGHTS

Section 1. Rights of Publication. Members shall be free to use and publish any research results, ideas, algorithms, techniques and other information developed in connection with the Corporation during the life of this corporation, except that intellectual property described in (b) and (c) below shall be subject to the licenses specified therein.

Section 2. Ownership of Copyrights and Patents. Patentable inventions and copyrighted materials developed jointly by Members during the course of activities of the Corporation shall be jointly owned by their respective inventors, authors and assignees. Each joint owner shall be entitled to exercise all rights of ownership as provided by law, without, however, an obligation of accounting from one to the other. Members acknowledges that all such jointly owned inventions, software or other copyrightable materials, or materials owned by Members made available by Members for activities of the Corporation, will be made available to the general public pursuant to the then-current Software Notice and License

policy of the Corporation. Specific exceptions may be made upon approval of the Management Board.

Section 3. Licenses. Members agree to grant and hereby grant to all other Members a non-exclusive, royalty-free, irrevocable, right and license to use, reproduce, modify, translate, distribute, publicly display and publicly perform throughout the world all computer software and documentation developed or made public as part of the processes and procedures of the Corporation; provided, however, that nothing in this article shall require a Member to make its Confidential Information or patents freely available to the public, to the extent such holdback is permitted by law (e.g., anti-trust/competition laws related to inclusion of proprietary processes in industry standards).

Section 4. Corporate Transparency. It shall be the general goal of the Corporation to facilitate third-party licenses, if necessary for support of the Specifications, between Members and the industry users, and not for the Corporation to become an indispensable party as licensors of operational implementations of any elements owned jointly by Members. However, the Corporation may receive ownership or exclusive licenses certain of intellectual property from others, provided the terms of such ownership envision the ultimate distribution of such ownership if the Corporation is dissolved or the assets are otherwise sold or distributed.

Section 5. For the purpose of administration and protection of trademarks, the Corporation shall own the trademarks created jointly by the Members with respect to any products and services implementing or referencing the Specifications, and shall provide license terms or guidelines for such marks to be used by Members or by successful recipients of certification. Members agree to execute any documents necessary to secure and preserve such ownership to the Corporation upon request.

ARTICLE X LIAISON

Section 1. **LIAISON AGREEMENTS.** The MANAGEMENT BOARD may enter into Liaison Agreements with one or more Industry Standard Bodies that set forth the process for transition of a FINAL SPECIFICATION to such Industry Standard Bodies and which shall include the responsibilities and obligations of both parties. Such Liaison Agreements are subject to approval of the Contributing Members and shall, at a minimum cover the following items:

- a. Establishment of a Liaison Member of the Industry Standard Body who will serve as the point of contact for all issues and status between the Industry Standard Body and the Corporation;

- b. Corporation obligations in support of transition of FINAL SPECIFICATIONS from the Corporation to the Industry Standards Body (e.g., licensing and IP commitments);
- c. Industry Standards Body obligations in support of transition of FINAL SPECIFICATIONS from the Corporation to the Industry Standards Body (e.g., trademark initiation
- d. Processes to provide Industry Standards Bodies access to DRAFT SPECIFICATIONS (with MANAGEMENT BOARD approval), and for such Industry Standards Body to provide feedback to the Corporation
- e. Acceptance processes for the transition of the Corporation specifications to the standards body) including criteria and time deadlines, milestones.
- f. Coordination of public statements/press releases
- g. Termination of the Liaison Agreement.

Section 2. **CONTINGENCIES.** In the event that an Industry Standards Body: a) chooses to not enter into a Liaison Agreement or terminates a Liaison Agreement; b) chooses not to or fails to undertake an action requested by the Corporation regarding the usage of a FINAL SPECIFICATION, then that Industry Standards Body shall not be considered by the Corporation as an acceptable Industry Standards Body for further liaison responsibilities and obligations. The MANAGEMENT BOARD may extend, modify or rescind the Liaison Agreement according to the terms and conditions of the Liaison Agreement.

Section 3. **INDEPENDENT BODY.** The MANAGEMENT BOARD may decide to publish, maintain and update a FINAL SPECIFICATION beyond the time that an Industry Standards Body has initially adopted the FINAL SPECIFICATION, for the purpose of continued promotion of the FINAL SPECIFICATION to other Industry Standards Bodies and other standards organizations.

ARTICLE XI CONFIDENTIALITY

Section 1. As a general principle, no MEMBER wishes to receive from any other MEMBER any information which the disclosing MEMBER considers to be confidential; however, the MEMBERS do wish to allow the work of the Corporation to proceed in a constructive manner under conditions which promote candid and open discussions.

Section 2. Each receiving MEMBER agrees to hold the CONFIDENTIAL INFORMATION of the Corporation or of any other MEMBER in confidence for a period of five (5) years following the date of disclosure, by using the same degree of care each uses for its own CONFIDENTIAL INFORMATION, but not less than reasonable care, to avoid the use of CONFIDENTIAL INFORMATION by the Receiving Member for any purpose other than in furtherance of the Mission of the

Corporation, and to avoid the disclosure of such CONFIDENTIAL INFORMATION to any third parties (including its parent, or affiliated corporations of a Receiving MEMBER) or its employees or consultants, except employees and consultants of such Receiving MEMBER who have a need to know the information disclosed hereunder and are subject to confidentiality obligations no less restrictive than those set forth herein. The receiving MEMBER shall have the right to make a limited number of copies of CONFIDENTIAL INFORMATION for internal use only, but only in furtherance of the development of a particular SPECIFICATION for which the CONFIDENTIAL INFORMATION was disclosed to such MEMBER.

Section 3. The obligations of confidentiality under this Article XI shall not apply to information designated as CONFIDENTIAL INFORMATION which (a) is already known to the receiving MEMBER at the time of disclosure, as may be evident from contemporaneous documentation, (b) is or becomes publicly known through no wrongful act of the receiving MEMBER; (c) is rightfully received by the receiving MEMBER from a third party without restriction on disclosure and without breach of this Article; (d) is approved for release by written authorization of the disclosing MEMBER; (e) was developed by the receiving MEMBER independently and without the use of any of the CONFIDENTIAL INFORMATION; or (f) is required to be disclosed by the receiving MEMBER pursuant to any order of a court, administrative agency, or any other governmental agency, provided that the receiving MEMBER shall give the disclosing MEMBER prompt written notice of such order and an opportunity to contest or seek an appropriate protective order.

Section 4. Notwithstanding this Article XI MEMBERS may be currently or in the future developing information internally, or receiving information from third parties that may be similar to the CONFIDENTIAL INFORMATION received from a disclosing MEMBER. Accordingly, nothing herein shall be construed as a representation or inference that any MEMBER will not develop products, or have products developed for it, or enter into joint ventures, Corporations, or licensing arrangements that, without violation of this Article, compete with the products or systems embodying the CONFIDENTIAL INFORMATION. Nothing herein shall be interpreted as restricting the assignment or reassignment of employees by the receiving MEMBER.

Section 5. Upon written request of a disclosing MEMBER, each receiving MEMBER shall promptly return to the disclosing MEMBER, or certify destruction of, all documents, plans, drawings, and other tangible items designated as CONFIDENTIAL INFORMATION furnished by the disclosing MEMBER, and all copies thereof.

Article XII COMPLIANCE WITH ANTITRUST LAWS

Section 1. The MEMBERS will be combining unique experience and skills to create SPECIFICATIONS. The MEMBERS are committed to fostering open competition in the development and sales of products and services related to Corporation SPECIFICATIONS. The MEMBERS also understand that in certain lines of business they are direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any applicable antitrust

or competition laws pertaining to monopolistic or anti-competitive practices. Thus, all MEMBERS shall comply with all applicable antitrust and competition laws of all relevant jurisdictions. In addition the MANAGEMENT BOARD shall from time to time promulgate detailed Antitrust Compliance Guidelines for the consideration of the MEMBERS concerning their participation in the Corporation. These Guidelines are not intended to replace or displace each MEMBER'S own antitrust policies, but shall operate to guide the MEMBERS' participation in the Corporation.

Section 2. As a result of joining the Corporation, participating in the development of SPECIFICATIONS, or in any way voting for or endorsing SPECIFICATIONS, the MEMBERS are not required to develop or market any offerings, and are not precluded from engaging in any business activities whatsoever, even if they are competitive with the activities conducted under these Bylaws.

ARTICLE XIII REPRESENTATIVES OF MEMBERS

Section 1. **DELEGATES OF MEMBERS.** Whenever membership is held in the name of a firm or corporation, one individual, certified in writing by a responsible official of the MEMBER to represent the MEMBER to the Corporation, shall be designated the "Voting Delegate", and shall exercise the power of the MEMBER, if any, and such individual's name shall be certified to the Secretary of the Corporation together with an Alternate ("Alternate Voting Delegate")

Section 2. **CHANGE OF DELEGATE.** A MEMBER of the Corporation may change from time to time its Voting Delegate or Alternate Voting Delegate by notifying the Secretary of such change in accordance with the provisions of the preceding section. In the event the Voting Delegate changed is an officer or Board Member of the Corporation, such shall be deemed to be vacant and shall be filled in accordance with these Bylaws.

ARTICLE XIV DUES, INITIATION FEES AND ASSESSMENTS

Section 1. **DUES, INITIATION FEES AND ASSESSMENTS.** The MANAGEMENT BOARD shall adopt an annual budget of all proposed expenses for the current fiscal year. The expenses of the Corporation shall be distributed among and paid by the MEMBERS in accordance with Article IV above. The MANAGEMENT BOARD also shall determine from time to time the membership fees.

Section 2. **ANNUAL BUDGET.** The MANAGEMENT BOARD shall approve an annual budget for the next fiscal year at or before an Annual Meeting which can be distributed to the MEMBERS at the Annual Meeting.

Section 3. **DELINQUENCY.** It shall be the duty of the Treasurer to report to the Chairperson, on or before an Annual Meeting of the Corporation or upon request, the name of any MEMBER who may, at the time of the meeting, be sixty (60) days or more in arrears of its dues or assessments. No such MEMBER so in arrears shall have its individual vote counted on any matter submitted in such meeting or be counted in ascertaining a quorum. A Member whose annual membership fees have been allowed

to lapse without explanation shall be deemed to have resigned ninety (90) days after having been sent a proper reminder invoice of the dues owed, provided, however that any such lapsed Member may be restored to good standing upon making payment or acceptable payment arrangements within a reasonable period after being notified of the termination of its membership.

ARTICLE XV DISSOLUTION, SALE, DISTRIBUTION

Section 1. **DISSOLUTION:** The MANAGEMENT BOARD of the Corporation may vote to dissolve the organization by the affirmative vote of seventy-five (75%) per cent of the entire MANAGEMENT BOARD at a meeting called therefore upon thirty (30) days written notice by the Chairperson. The Corporation shall then petition the appropriate court of the Commonwealth of Massachusetts for dissolution, setting forth the reasons therefore. Dissolution shall become effective upon entry of the decree by the clerk of the court. The Chairperson shall be responsible for winding down the business during the period after dissolution. The Corporation shall continue as a body corporate for at least three (3) years after termination for the purpose of prosecuting and defending suits by or against it, and for gradually settling its affairs, but not for continuing the business for which the corporation was established. [MGL ch. 156B § 102]

Section 2. **DISTRIBUTION OF ASSETS UPON DISSOLUTION, SALE OR REORGANIZATION.** Upon dissolution of the Corporation, after paying or making provision for the payment of all the liabilities of the Corporation and with the approval of the Court, all of the assets of the Corporation shall be distributed exclusively for the purposes of the Corporation in such manner, or for one or more alternative exempt purposes within the meaning of sections 501 (c)(6) or 501(c)(3) of the Code, or shall be distributed to the federal government or to a state or local government, for a public purpose not inconsistent with the purposes of the Corporation. Any such assets not so disposed of shall be disposed of by a Court of Competent Jurisdiction of the county in which the principal office of the corporation 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.

Section 3. **Sale of Assets.** The Corporation may authorize the sale, lease, exchange or other disposition of all or substantially all of its property and assets upon such terms and conditions as it deems expedient, provided there is a vote of two-thirds of its members entitled to vote thereon, at a meeting duly called for the purpose, with notice given as required by law, except that no such vote shall be required if such transaction does not involve or will not result in a material change in the nature of the activities conducted by the corporation. If members are entitled to vote on any corporate action but are not entitled to vote on action proposed under this section, the corporation shall give to such members prior notice of any action proposed under this section. [MGL c.180 s.8A, 6B]

ARTICLE XVI NON-DISCRIMINATION

Section 1. Non-discrimination. The Incorporators, Officers, Directors, committee members, members, employees and persons served by this Corporation shall be selected entirely on a non-discriminatory basis with respect to age, sex, handicap, race, creed, color, religion, national origin or sexual orientation.

ARTICLE XVII GENERAL

Section 1. **GENDER.** Whenever used in these Bylaws, the use of any gender shall be applicable to any other gender or to all genders as may be appropriate in the context.

Section 2. **DEFINITIONS**

“CONFIDENTIAL INFORMATION” means and includes: (i) any DRAFT or FINAL DRAFT SPECIFICATION prior to its adoption and public release by the MANAGEMENT BOARD; (ii) all meetings, together with all minutes and other records thereof, of the MANAGEMENT BOARD and its subcommittees, pertaining to incomplete work of the TECHNICAL WORKING GROUP and any of its Working Groups which they have determined should be confidential; (iii) written materials (including CONTRIBUTIONS) marked as confidential at the time of disclosure; and (iv) orally- or visually-disclosed material that is identified as confidential at the time of disclosure and summarized in a written memorandum sent to the appropriate Working Group, committee or the MANAGEMENT BOARD within thirty (30) days of disclosure.

“CONTRIBUTIONS” shall mean technical work, output or commentary that is submitted, presented or otherwise made available to the Corporation in the development of SPECIFICATIONS, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally and memorialized with specificity in the written minutes of the TECHNICAL WORKING GROUP, or Working Group, and attributed in the meeting minutes to the submitting MEMBER, provided that the minutes are promptly provided to the individual representing the MEMBER, unless the submitting MEMBER withdraws its submission in writing as soon as practicable and in no event later than thirty (30) days after receipt of such written minutes.

“DRAFT SPECIFICATION” shall mean a document in draft or non-final form being worked on by the TECHNICAL WORKING GROUP prior to adoption by the MANAGEMENT BOARD as a FINAL SPECIFICATION that contains a set of technical criteria (including reference to existing SPECIFICATIONS and protocols) that support the MISSION.

“FINAL DRAFT SPECIFICATION” shall mean a DRAFT SPECIFICATION submitted by the TECHNICAL WORKING GROUP to the MANAGEMENT BOARD for final approval.

“FINAL SPECIFICATION” shall mean a document recommended by the TECHNICAL WORKING GROUP and approved by the MANAGEMENT BOARD as a final release. The term “FINAL SPECIFICATION” shall also include any

updates, revisions or new versions of the foregoing that are adopted by the MANAGEMENT BOARD.

"FULLY COMPLIANT IMPLEMENTATION" shall mean: (a) an implementation (software or hardware) which implements all of the "Required" (mandatory) portions of a FINAL SPECIFICATION; or (b) an implementation which implements all of the "Required" portions of an optional portion (not mandatory) of a FINAL SPECIFICATION; and, in each instance, (c) an implementation of all portions of a FINAL SPECIFICATION required for a specific type of product or component thereof.

"LICENSED MATERIALS" shall mean any literary work or other work of authorship, including but not limited to toolkits, software development kits ("SDK"), sample code, reference implementations, prototypes, software, software protocols, formats, interfaces and test tools, whether pre-existing or newly created or prepared under the auspices of the TECHNICAL WORKING GROUP, that is offered by one or more MEMBERS for use in the development of or for inclusion in a SPECIFICATION.

"NECESSARY CLAIMS" shall mean those claims of all patents, pending patent applications and utility models, regardless of when issued or effective, under which a MEMBER, has the right, at any time during the term of its participation, to grant licenses of the scope contemplated herein, all to the extent and only to the extent that the MEMBER, has the right to grant such licenses as of the date of any license to be entered into with the other MEMBER(S) without compensation to a third party other than employees of the MEMBER, and which are necessarily infringed by a FULLY COMPLIANT IMPLEMENTATION of a specific FINAL SPECIFICATION approved by the MANAGEMENT BOARD where such infringement could not have been avoided by another technically feasible non-infringing implementation of such FINAL SPECIFICATION. Notwithstanding the foregoing sentence, NECESSARY CLAIMS do not include any claims other than those set forth above even if contained in the same patent as NECESSARY CLAIMS.

"QUORUM" shall mean that more than fifty percent (50%) of the MEMBERS of the applicable group (i.e. the MANAGEMENT BOARD or TECHNICAL WORKING GROUP) are present at a meeting, either in person, by telephone or by such other means as may be prescribed by such group or by these By-Laws.

"SPECIFICATION" means a DRAFT SPECIFICATION, FINAL DRAFT SPECIFICATION and/or FINAL SPECIFICATION where, in the specific context in which the term is used in these By-Laws, there is no need to distinguish whether the document in question is a DRAFT SPECIFICATION, FINAL DRAFT SPECIFICATION or a FINAL SPECIFICATION.

ARTICLE XVIII AMENDMENTS

Section 1. **BYLAWS.** These Bylaws may be amended upon the affirmative vote of two-thirds (2/3) of the MANAGEMENT BOARD at a meeting called for the purpose, or by unanimous written consent, but no bylaw inconsistent with law shall be made by the Corporation.

Section 2. **ARTICLES.** By vote of two-thirds of the voting Members, at a meeting duly called for the purpose, the corporation may authorize any amendment of the Corporate articles of organization, including a change of its purposes or name, or a restatement of the articles of organization which restatement may affect any permitted amendment, provided all voting members are provided with prior notice of the proposed amendments, and provided any additions or deletions made by amendment could have been made in the original articles. [MGL c.180 s.7, s.6B]