

SECOND AMENDED AND RESTATED
BY-LAWS OF

MESSAGING ANTI-ABUSE WORKING GROUP, INC.

ARTICLE I

NAME, PURPOSE AND OFFICES

Section 1.1 Name

The name of the corporation is “Messaging Anti-Abuse Working Group, Inc.” and the corporation is referred to in these By-laws as the “Consortium.”

Section 1.2 Principal Office

The principal office of the Consortium shall be located at 40 Broad Street, Boston, Massachusetts. The Board of Directors of the Consortium (the “Board of Directors”) is hereby granted full power and authority to change said principal office from one (1) location to another both within and without said state.

Section 1.3 Other Offices

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

Section 1.4 Purpose

The nature of the business or purposes to be conducted or promoted by the Consortium is to engage in any lawful act or activity for which corporations which are organized not for profit may be organized under the General Corporation Law of Delaware. The primary purpose of the Consortium is to resolve matters of common concern in the communications industry and to undertake such activities as may from time to time be appropriate to further such purpose.

In support of this purpose, the Consortium intends to engage in some or all of the following activities: work collaboratively to address forms of messaging abuse such as messaging spam, virus attacks, denial-of-service attacks, phishing, SMS-SPAM, VoIP Spam, instant messaging spam, and other forms of abuse through the establishment of industry collaboration, best practices, reports, white papers, and information. In addition, the Consortium will focus on industry collaboration, best practices and data sharing to improve the reliability and safety of email and ecommerce. The Consortium may also promote solutions worldwide, operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in the Consortium’s initiatives, interact with other organizations and key legislative bodies, and develop codes of conduct, white papers, and best practices. More specifically, the Consortium may: (a) develop and/or fund the development of interoperability tests and/or certification tests, (b) administer or subcontract testing services, (c) create and own distinctive trademarks, service marks and/or certification marks, (d) administer or subcontract a branding program, (e) create various printed and/or electronic materials for distribution to Members (as defined in Section 2.1 below) and non-Members, (f) maintain its own website, (g) coordinate the promotion of white papers and best practices among Members and non-Members, (h) create basic marketing promotional collateral (e.g., both web pages as well as tangible materials), (i) maintain relations with, and leverage standards developed by, other standard setting organizations and industry consortia and (j) undertake those other activities which the Board of Directors may from time to time approve.

Section 1.5 Nonprofit Status

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

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

ARTICLE II

MEMBERS

Section 2.1 Classes of Membership

All voting and non-voting memberships in the Consortium are collectively referred to in these By-laws as "Memberships," and a person or entity holding Membership is referred to in these By-laws as a "Member." The Consortium shall initially have three (3) classes of Membership: Sponsor Members, Full Members and Supporting Members. Sponsor Members, Full Members and any future classes of members which are entitled to voting rights (other than rights to vote on the election of directors) shall be collectively referred to as "Voting Members." Additional classes of Members may be created in the future, and the rights of existing classes of Members may be amended, in each case pursuant to Section 2.8 of these By-laws.

Section 2.2 General Conditions of Membership

(a) Eligibility Criteria. An applicant is eligible to become a Member of the Consortium if such applicant meets the following criteria (collectively, the "Eligibility Criteria"): (1) the applicant is an association, partnership, organization, governmental agency, company, corporation, academic entity, or non-profit entity, or solely with respect to joining as a Supporting Member, an individual, (2) the applicant has demonstrated a willingness to further and contribute in good faith to the advancement of the objectives of the Consortium, (3) the applicant generally shares the business and industry goals of the Consortium. Notwithstanding the foregoing, no applicant or Member shall at any time be required to endorse or adopt any best practice, white paper, or Specification to satisfy the Eligibility Criteria.

(b) Admission Process. Unless otherwise provided by the Board of Directors, an applicant shall be admitted to Membership upon (1) receipt by the Consortium of the applicant's completed written application on such form as may from time to time be adopted by the Board of Directors (the "Membership Application"), (2) a determination by the Board of Directors, in its sole discretion, that the applicant meets the Eligibility Criteria and (3) payment of such application fees, assessments, initiation fees (if any), annual dues or other fees by the applicant for such class of Membership as may from time to time be established by the Board of Directors (collectively, "Financial Obligations").

(c) Membership Term and Obligations. All Memberships shall have a term of one (1) year (the "Term"). On an annual basis, the Board of Directors shall review each Member to evaluate whether such Member has met the Eligibility Criteria during the Term and complied with the terms and conditions of the Consortium's Certificate of Incorporation, By-laws, Membership Application and such rules and policies as the Board of Directors and/or any committees thereof (each a "Board Committee") may from time to time adopt in its or their sole discretion, including without limitation, timely payment of all Financial Obligations (the foregoing, collectively, the "Membership Obligations"). A Member's Membership shall be renewed for another Term at the sole discretion of the Board of Directors. Any Member whose Membership has not been renewed may reapply for Membership after six months. During the Term, the Membership of a Member that fails to comply with the Membership Obligations shall be subject to suspension or termination pursuant to Section 2.9 below.

Section 2.3 Privileges of Sponsor Membership

Each Sponsor Member, while in compliance with all Membership Obligations, shall be entitled to:

(a) with respect to those Sponsor Members that submit a completed Membership Application:

(i) on or before May 18, 2004 (an "Initial Sponsor Member"), and subject to Section 2.7(b) of these By-laws, designate one (1) representative to serve as a member of the Board of Directors (a "Director");

(ii) after May 18, 2004, the first three additional Sponsor Members that join the Consortium, subject to Section 2.7(b) of these By-laws, shall also have the right to designate one (1) representative to serve as a Director; and

(iii) thereafter, each Sponsor Member that joins the Consortium shall, subject to Section 2.7(b) of these By-laws, be eligible to designate one (1) representative to serve as a Director at such time as a vacancy may occur among those seats on the Board of Directors allocated to Sponsor Members, or if the Board of Directors votes, by a Super Majority, to expand the number of seats on the Board of Directors to be held by Sponsor Members. If at any time the number of Sponsor Members without Director appointees exceeds the number of open seats on the Board of Directors at such time as a vacancy shall occur or the Board of Directors is expanded, then the vacancy or the additional number of seats made available, as the case may be, shall be allocated by such means as the Board of Directors may from time to time deem to be appropriate;

(b) if such Sponsor Member has a Director representative, nominate such Director to run for election as an officer of the Consortium (each an “Officer”); and

(c) all rights of the Full Members other than those set forth in Section 2.4(a) and 2.4(b).

Section 2.4 Privileges of Full Membership

Each Full Member, while in compliance with all Membership Obligations, shall be entitled to:

(a) nominate one (1) representative to run for election as a Director;

(b) participate in the election of Directors as provided in Section 4.3(c);

(c) participate in all consensus polls of the Consortium;

(d) nominate one (1) representative to run for election as chairperson or vice-chairperson of any Committee of the Members, as contemplated by Section 5.4 below (a “Member Committee”) and Sub-Group (as defined in Section 5.4(c) below);

(e) appoint one (1) voting representative, on a one (1) vote per Member basis, to each Member Committee and Sub-Group that the Consortium may establish and, subject to any limitations on attendance imposed by the Board of Directors, appoint non-voting representatives to each such Member Committee and Sub-Group;

(f) attend all general and special meetings of the Membership provided for in Article III of these By-laws;

(g) propose initiatives to be acted upon by the Consortium;

(h) receive one (1) copy by electronic distribution, without charge, of all publications of the Consortium that are intended for regular distribution, prior to distribution to the public, including pre-public access to any Specifications, white papers and best practices under development and of all final Specifications, white papers, and best practices as adopted by the Consortium; and

(i) receive such free or discounted services provided by the Consortium as the Board of Directors may designate from time to time.

Section 2.5 Privileges of Supporting Membership

Each Supporting Member, while in compliance with all Membership Obligations, shall be entitled to:

(a) appoint an unlimited number of non-voting representatives to the Technical Committee (as defined in Section 5.4(a) below) and each Sub-Group thereof, subject to any limitations on attendance imposed by the Board of Directors;

(b) attend all general and special meetings of the Membership provided for in Article III of these By-laws, provided, that only the Voting Members shall be entitled to vote at such meetings, except as specifically provided for in these By-laws, the Certificate of Incorporation or by law

(c) receive one (1) copy by electronic distribution, without charge, of all publications of the Consortium that are intended for regular distribution, prior to distribution to the public, including pre-public access to any Specifications, white papers, and best practices under development and of all final Specifications, white papers, and best practices as adopted by the Consortium;

(d) receive such free or discounted services provided by the Consortium as the Board of Directors may designate from time to time; and

(e) such other benefits, rights and privileges applicable to such Member’s Membership class as the Board of Directors may designate from time to time.

Section 2.6 Rights in Intellectual Property

(a) Definitions. For purposes of these By-laws, the following definitions shall apply:

(i) IPR Policy: A policy setting forth the intellectual property policy adopted by the Consortium pursuant to Section 4.10 of these By-Laws.

(ii) Submissions: Any document, specification, proposed standard, information, data, material, publication, white paper, presentation, proposal, software, computer program, or code that is designated in writing to the Consortium as submitted to the Consortium.

(iii) Specification: A technical specification formally adopted by the Consortium pursuant to Section 4.10 of these By-laws.

(b) Patent. The Consortium does not anticipate the creation of Specifications. If, however, the Consortium votes to create a Specification pursuant to Section 4.10, the Specification will be subject to the IPR Policy. No work on a Specification may be initiated prior to the formal adoption of the IPR Policy.

(c) Copyright. Unless otherwise agreed in advance in writing between a Member and the Consortium with respect to specific material submitted to the Consortium, the following copyright rules shall apply. The copyright for all Specifications and other work product adopted by the Board of Directors shall be owned by the Consortium. Each Member understands that such Specification and adopted work product may consist of a compilation of Submissions from Members. In the event that the Specification or work product contains such Submissions, each Member hereby assigns ownership to the Consortium of any copyright rights in such Submissions, but only to the extent such Submissions are included as part of the Specification or adopted work product; the Consortium hereby grants to the Member that submitted such Submissions a non-exclusive, worldwide, perpetual, royalty-free license back to the copyright rights of such Submissions, to copy, distribute, sublicense (through multiple tiers of distribution), display, perform, and create derivative works based upon such Submissions. The foregoing assignment of ownership in Submissions does not apply to Submissions that are referenced in a Specification or adopted work product but that are not included as part of the Specification or adopted work product itself. Each Member will retain copyright ownership of its Submissions, except to the extent provided above. Each Member hereby grants the Consortium and Members a non-exclusive, worldwide, perpetual, royalty-free license, to the extent of Member's copyright rights, to copy, distribute, display, perform, and create derivative works based upon its Submissions for the purpose of developing the Specifications or other work product proposed in the Consortium.

(d) Warranty Disclaimer. ALL SUBMISSIONS TO THE CONSORTIUM ARE ACKNOWLEDGED TO HAVE BEEN MADE WITHOUT ANY WARRANTY WHATSOEVER, AND IN PARTICULAR, WITHOUT ANY WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. ANY USAGE BY ANY MEMBER OR NON-MEMBER OF ANY SPECIFICATION OR OTHER WORK PRODUCT SHALL BE ENTIRELY AT THE RISK OF THE USER, AND NO MEMBER OR MEMBER REPRESENTATIVE SHALL HAVE ANY LIABILITY WHATSOEVER TO ANY MEMBER OR NON-MEMBER FOR ANY DAMAGES OF ANY NATURE WHATSOEVER ARISING DIRECTLY OR INDIRECTLY FROM THE USE OR IMPLEMENTATION OF ANY SUCH SPECIFICATION OR OTHER WORK PRODUCT. ALL SPECIFICATIONS AND, WHERE APPROPRIATE, OTHER WORK PRODUCT DISTRIBUTED BY THE CONSORTIUM, SHALL BEAR AN APPROPRIATE DISCLAIMER TO SUCH EFFECT.

(e) Trademarks. Trademarks created by the Consortium, registered or otherwise, are the property of the Consortium. Use of Consortium trademarks shall be governed by such policies, procedures and guidelines as may be established and approved by the Consortium from time to time, and applicable law. The Consortium's use of Member trademarks, registered or otherwise, shall only be by written agreement and shall be governed by such policies, procedures and guidelines as may be established and approved by the owners of such trademarks, and applicable law.

(f) No Implied Rights. Except as specifically set forth in this Section 2.6, no express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other intellectual property right of any Member is or shall be deemed to be granted to the Consortium or to any other Member or third party by reason of its Membership in or participation in the activities of the Consortium, or as may be otherwise provided in a written agreement by the parties so affected.

Section 2.7 Subsidiaries, Etc.

(a) Only the legal entity which has been accepted as a Member of the Consortium and its Subsidiaries (as defined below) shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member and its Subsidiaries shall be treated together as a single Member. For purposes of this Section, the term "Subsidiaries" shall mean all Related Companies (as defined below) that a Member owns, either directly or indirectly.

(b) Only one (1) Member which is part of a group of Related Companies (as defined below) shall be entitled to have a representative on the Board of Directors at one (1) time. For purposes of these By-laws, the term “Related Company” shall mean any entity which controls or is controlled by a Member or which, together with a Member, is under the common control of a third party, in each case where such control results from ownership, either directly or indirectly, of more than fifty percent (50%) of the voting securities or membership interests of the entity in question; and “Related Companies” are entities that are each a Related Company of a Member.

(c) If a Member is itself a consortium, membership organization, user group or other entity that has members or sponsors, then the rights and privileges granted to such Member shall extend only to the representatives (employees and individuals serving on a contractor basis) of such Member, and not to its members or sponsors, unless otherwise approved by the Board of Directors in a specific case from time to time.

(d) Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its Membership for the then current year to a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that the transferee agrees to be bound by the Membership Obligations.

Section 2.8 Additional Classes of Members

The conditions, privileges, powers, and voting rights (if any) of any class of Members may be changed, and one (1) or more additional classes of Membership may be created, and the conditions, voting rights (if any), powers and privileges of each such class may be prescribed, by adoption of an amendment to these By-laws pursuant to Article XIV of the By-laws.

Section 2.9 Termination or Suspension of Membership

(a) Any Member’s Membership may be suspended or terminated immediately upon notice in accordance with Section 7.1 by the Board of Directors in its sole discretion for no reason or any reason, including but not limited to for failure to satisfy the Membership Obligations or for engaging in any conduct, either within or without the Consortium, that is contrary to the interests of the Consortium or to the advancement of the Consortium’s business or industry goals, as determined by the Board in its sole discretion. Financial Obligations already paid shall not be refundable upon any such termination or suspension, and all Financial Obligations of such Member which may be accrued and unpaid as of the date of such termination shall remain due and payable.

(b) Any Member that has had its Membership terminated pursuant to this Section 2.9 may re-apply for Membership after 12 months in accordance with Section 2.2 above.

Section 2.10 Resignation by Member

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

Section 2.11 Membership Book

The name and address of each Member shall be contained in a Membership Book to be maintained at the principal office of the Consortium (the “Membership Book”). Termination of any Membership shall be recorded in the book together with the date of such termination. Each Member shall be responsible for apprising the Consortium in writing of all changes to its name and address, and of the names and addresses of all representatives of such Member appointed to be members of Member Committees designated by such Member in its application for Membership or to receive notices or to vote on behalf of such Member.

Section 2.12 Levy of Dues, Assessments or Fees

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

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

Section 2.13 Use of Names

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

ARTICLE III

MEETINGS OF MEMBERS

Section 3.1 Place of Meetings

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

Section 3.2 Annual Meeting

Annual meetings of Members ordinarily shall be held by written consent pursuant to Section 3.10. Notwithstanding the foregoing, however, the Board of Directors may call any annual meeting to be held in person and each such meeting, once called, shall take place on the first Monday in September of the applicable year, if not a legal holiday, and if a legal holiday, then on the second secular day following, at 10:00 a.m. local time, or at such other date and time as shall be designated from time to time by the Board of Directors or the Chairman. Pursuant to such written consent, or at such meeting, as applicable, the Voting Members shall elect a Board of Directors in accordance with Section 4.3 and shall transact such other business as may properly be addressed by written consent, or at such meeting, as applicable. If no annual meeting is held (and no annual consent has been executed) in accordance with the foregoing provision, the Board of Directors shall cause a meeting to be held as soon thereafter as convenient, which meeting shall be designated a special meeting in lieu of annual meeting.

Section 3.3 Special Meetings

Special meetings of the Members, for any purpose or purposes, may, unless otherwise prescribed by statute or by the Certificate of Incorporation, be called by the Board of Directors or the Chairman or Secretary at the request in writing of a majority of the Directors then in office, or at the request in writing of Voting Members entitled to vote at least ten percent (10%) of the aggregate votes of all Voting Members. Such request shall state the purpose or purposes of the proposed meeting. Business transacted at any special meeting shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

Upon request by any person or persons entitled to call a special meeting of the Voting Members, the Chairman, any Vice-Chairman or Secretary shall, within thirty (30) days after receipt of the request, cause notice to be given to the Voting Members entitled to vote at such meeting that a special meeting will be held at a time chosen by the Board of Directors, but not less than thirty-five (35) nor more than ninety (90) days after receipt of such request.

Section 3.4 Notice of Meetings

Except as otherwise provided by law or these By-laws, written notice of each meeting of the Members, annual or special, stating the place, date and hour of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, and such other information as may be required by law shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting, to each Member entitled to attend such meeting.

Section 3.5 Voting List

The Officer who has charge of the Membership Book of the Consortium shall prepare and make a complete list of the Members entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each such

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

Section 3.6 Quorum

Except as otherwise provided by statute, the Certificate of Incorporation or these By-laws, Voting Members entitled to vote more than fifty percent (50%) of the aggregate votes of all Voting Members (or such higher percentage of Voting Members as may be required by law, these By-laws or the Certificate of Incorporation to approve any action to be taken at such meeting), present in person or represented by proxy, shall constitute a quorum at all meetings of the Members for the transaction of business. Member Committees shall have the same rules relating to quorum requirements and voting majorities as provided for in these By-laws, unless otherwise approved by the affirmative vote of the Board of Directors.

Section 3.7 Adjournments

Any meeting of Members may be adjourned from time to time without notice to all Members to any other time and to any other place at which a meeting of Members may be held under these By-laws or under applicable law if the time and place of such adjourned meeting, the means of remote communications, if any, by which Members may be deemed to be present in person and vote at such adjourned meeting and such other information as may be required by law, are announced at the meeting at which the adjournment is taken. Such adjournment shall be approved by a majority of the Voting Members present in person or represented by proxy and entitled to vote at such meeting (regardless of whether a quorum is present), or, if no Voting Member is present or represented by proxy, by any Officer entitled to preside at or to act as Secretary of such meeting. At any reconvened meeting following such an adjournment the Consortium may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to all Members.

Section 3.8 Action at Meetings

(a) Unless the question is one upon which, by express provision of law, the Certificate of Incorporation or these By-laws, a different vote is required (in which case such express provision shall govern and control the decision of such question), when a quorum is present at any meeting of Members, the vote of more than fifty percent (50%) of the aggregate votes of all Voting Members, present in person or represented by proxy and entitled to vote on the question, shall decide any question brought before such meeting.

(b) In the event that any vote is to be taken of a single class of Voting Members, then a quorum for such vote shall be not less than fifty percent (50%) of the Voting Members of that class, and when such quorum is present, the vote of more than fifty percent (50%) of the aggregate votes of the Voting Members of that class present in person or represented by proxy and entitled to vote on the question, shall decide such question.

(c) In the event that the Voting Members shall desire to take any action that they are permitted to take by these By-laws, the Certificate of Incorporation or applicable law, and such action would, by provision of these By-laws or any resolution adopted by the Board of Directors, require a Super Majority Vote of the Board of Directors were such action to be taken by the Board of Directors, then the taking of such action by the Voting Members shall require the affirmative vote of eighty-five percent (85%) of all Voting Members, present in person or represented by proxy and entitled to vote on the question.

Section 3.9 Proxies

Each Member entitled to vote with respect to any corporate action at a meeting of Members, or to express consent or dissent to any corporate action in writing without a meeting, may authorize another person or persons to act for him or her by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. Without limiting the manner in which a Member may authorize another person or persons to act for such Member as proxy pursuant to this section, the following shall constitute valid means by which a Member may grant such authority:

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

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

Section 3.10 Action Without Meeting

Any action required or permitted to be taken at any annual or special meeting of Members, or at any meeting of a Member Committee, Sub-Group thereof or other group of Members or subset of Members, may be taken without prior notice and without a vote, if a consent in writing, setting forth the action to be taken, shall be signed by Members (or all members of a class of Members, as the case may be) making up not less than that percentage of all Members as would be necessary to authorize or take such action at a meeting at which all Members (or class of Members, as the case may be) entitled to vote thereon were present and voted. Prompt notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those otherwise entitled to vote thereon who have not consented in writing. An electronic transmission consenting to an action to be taken and transmitted by a Member or proxyholder, or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the Consortium can determine (A) that the electronic transmission was transmitted by the Member or proxyholder or by a person or persons authorized to act for the Member or proxyholder and (B) the date on which such Member or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Consortium by delivery to its registered office in Delaware, its principal place of business or an Officer or agent of the Consortium having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to the Consortium's registered office shall be made by hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission may be otherwise delivered to the principal place of business of the Consortium or to an Officer or agent of the Consortium having custody of the book in which proceedings of meetings of Members are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Consortium.

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

Section 3.11 Nomination and Election Procedures

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

Section 3.12 Order of Business

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

ARTICLE IV

DIRECTORS

Section 4.1 Powers; Voting

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

Section 4.2 Number of Directors

Subject to Section 4.4, the total number of Directors shall be at least one (1) and not more than the number of Initial Sponsor Members, plus five (5).

Section 4.3 Nomination, Election and Term of Office of Directors

(a) Each Initial Sponsor Member shall be entitled to nominate and individually elect one (1) Director, which right to nominate and elect a Director shall continue for so long as such Initial Sponsor Member remains in compliance with all Membership Obligations at the level of Sponsor Member.

(b) In addition, each Additional Sponsor Member shall be entitled to nominate and elect one (1) Director, which right to nominate and elect a Director shall continue for so long as such Additional Sponsor Member remains in compliance with all Membership Obligations at the level of Sponsor Member.

(c) The Full Members, voting together as a class, shall elect two (2) Directors (each a “Full Member Director”), each to serve until the next annual meeting of the Members, and the selection of nominees for such positions shall be performed under such nominating procedures as may be set by the Board of Directors from time to time. Each Full Member Director may, but shall not automatically, be nominated and elected for additional one (1) year terms.

(d) At no time shall any Member be represented by more than one (1) Director.

(e) An individual Director shall hold office until the earliest to occur of (i) the expiration of the term for which such Director was elected or appointed, as the case may be, and such Director’s successor is elected and qualified, (ii) the expiration or termination of Membership of the Member that designated such Director, (iii) the death, resignation or removal of the Director, (iv) the combination, by merger, acquisition or otherwise, of two (2) Members that each have representatives on the Board of Directors, upon which event one (1) of the two (2) representatives, as designated by the surviving Member, shall be deemed to have resigned, or (v) if requested by the Board of Directors, upon the termination of the employment of such Director by the Member represented by such Director. In addition, during such times as any Member that has a representative serving on the Board of Directors has had its Membership suspended pursuant to Section 2.9 above, the attendance and voting rights of its Director representative shall also be suspended until such time, if ever, as such suspension is lifted.

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

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

Section 4.4 Enlargement or Reduction

Subject to Section 2.8 above, the number of Directors, the persons eligible to become Directors and the classes of Members eligible to elect and/or nominate Directors may be amended at any time by a Super Majority Vote of the Board of Directors or the affirmative vote of eighty-five percent (85%) of each class of the Voting Members.

Section 4.5 Resignation and Removal

Any Director may resign at any time upon notice to the Consortium in writing or by electronic transmission at the principal place of business of the Consortium or to the Chairman or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any Director who was designated by a Member under Section 4.3 may be removed by that Member. Any or all of the Directors who were elected by a class of Members voting as a class, or by the Board of Directors, may be removed by a majority vote of such class of Members or Board of Directors, respectively. Unless otherwise specified by law or the Certificate of Incorporation, any Director may be removed by a majority of the other Directors then in office for engaging in any conduct, either within or without the Consortium, that is contrary to the interests of the Consortium or to the advancement of the Consortium's business or industry goals; provided, however, that the Member or class of Members that designated or nominated and elected (as the case may be) such removed Director shall be entitled to designate or nominate and elect (as the case may be) a replacement for such removed Director to serve for the balance of such removed Director's term.

Section 4.6 Vacancies

(a) Vacancies on the Board of Directors occurring as a result of death or resignation, or by removal of a Director by the Member who appointed or elected such person, may be filled by an appointee of the same Member. All other vacancies shall be filled by the vote of a majority of Directors then in office, whether or not less than a quorum, or by a sole remaining Director. The term of a Director so appointed or elected shall be the unexpired portion of the term of the Director, if any, whom the Director so appointed or elected is replacing.

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

Section 4.7 Place of Meetings

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

Section 4.8 Regular Meetings

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

Section 4.9 Special Meetings

Special meetings of the Board of Directors may be called by the Chairman, Secretary, or on the written request of two (2) or more Directors, or by one (1) Director in the event that there is only one (1) Director in office. Two (2) business days' notice to each Director, either personally or by telecopy, commercial delivery service, electronic transmission, or similar means sent to his or her business or home address, or three (3) business days' notice by written notice deposited in the mail, shall be given to each Director by the Secretary or by the Officer or one (1) of the Directors calling the meeting. A notice or waiver of notice or any waiver by electronic transmission of a meeting of the Board of Directors need not specify the purposes of the meeting.

Section 4.10 Quorum, Action at Meeting, Adjournments

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

(b) In order to pass by "Super Majority Vote", a resolution must be taken at a meeting of the Board of Directors at which a quorum is present, and in support of which two-thirds (2/3) of the Directors present and participating (whether in person, by proxy or otherwise) have voted affirmatively, or by an equivalent number of Directors acting by written

consent in the manner described in Section 4.11 below. A Super Majority Vote of the Board of Directors shall be required with respect to the following matters:

- (i) Amending or repealing any provision of these By-laws;
- (ii) Amending the Certificate of Incorporation;
- (iii) Adopting or recommending to the Members an agreement of merger or consolidation;
- (iv) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of the Consortium's property and assets;
- (v) Approving or recommending to the Members the dissolution, liquidation or winding up of the Consortium or a revocation of any such dissolution, liquidation or winding up;
- (vi) Adopting or amending Membership criteria or Membership rights;
- (vii) Establishing any new Board Committee or Member Committee;
- (viii) Adopting, amending or publishing any Specification, white paper, best practice, and other publicly available work products;
- (ix) Enlarging or reducing the size of the Board of Directors;
- (x) Amending or modifying the eligibility requirements for Membership on the Board of Directors or the classes of Members eligible to designate and/or elect Directors;
- (xi) Adopting or amending an IPR Policy, which will be drafted by a Legal Committee established under this Section 4.10; and
- (xii) As otherwise specifically provided in these By-laws.

(c) No Director whose attendance and voting rights have been suspended shall be counted for purposes of determining quorum, or the number of Directors then in office, or the number of Directors required for voting purposes, unless otherwise required by law, these By-laws or the Certificate of Incorporation. If a quorum shall not be present at any meeting of the Board of Directors, a majority of the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present. In the event that one (1) or more of the Directors shall be disqualified from voting at any meeting upon any matter, then the required quorum as it relates to the consideration of such matter shall be reduced by one (1) for each such Director so disqualified.

Section 4.11 Action by Consent

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

- (i) such written consent shall have been sent simultaneously to all Directors then in office for their consideration;
- (ii) prompt written notice of any action so taken is given to those Directors who have not consented in writing or by electronic transmission; and
- (iii) two (2) or more such Directors have not objected to the taking of any such action by written notice delivered to the Consortium within ten (10) business days following the date that written notice of the Directors action is mailed or otherwise delivered to such Directors.

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

(b) Notwithstanding the foregoing, the ability of two (2) or more non-consenting Directors to prevent the taking of an action by written consent under clause 4.11(a)(iii) above shall not prevent any such action from being taken at a later date at an actual meeting of the Board of Directors.

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

Section 4.12 Telephonic Meetings

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

Section 4.13 Inspection Rights

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

Section 4.14 Fees and Compensation

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

ARTICLE V

COMMITTEES

Section 5.1 Committees of the Board of Directors

(a) A public policy committee of the Board of Directors (the “Public Policy Committee”) shall be established, and may have such sub-committees as it may choose from time to time to create. The Public Policy Committee shall consider matters relating to education, policy and interaction with other policy, standards and industry organizations and entities, including legislators and regulators, and may undertake such other tasks and duties as may from time to time be specified by the Board of Directors. The Public Policy Committee shall be subject to the review, and shall operate within, the strategic direction established by the Board of Directors.

(b) An external communications committee of the Board of Directors (the “External Communications Committee”) shall be established, and may have such sub-committees as it may from time to time choose to create. The External Communications Committee shall consider matters relating to the promotion of the mission of the Consortium and fostering awareness and acceptance of the purposes of the Consortium generally in the industry, and may undertake such other tasks and duties as may from time to time be specified by the Board of Directors. The External Communications Committee shall be subject to the review, and shall operate within, the strategic direction established by the Board of Directors.

(c) The Board of Directors may, by Super Majority Vote, create additional Board Committees, including without limitation, executive, nominating, audit, compensation and other Board Committees, each consisting of one (1) or more Directors appointed by the Board of Directors, as the Board of Directors may from time to time deem advisable to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board of Directors, subject to the limitations imposed by the Certificate of Incorporation or by these By-laws. The Board of Directors may designate one (1) or more Directors as alternate members of any Board Committees, who may replace any absent member at any meeting of such Board Committees. Any such Board Committee or Board Committees shall have such powers, duties and name or names as may be determined from time to time by resolution adopted by the Board of

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

Section 5.2 Meetings of Committees of the Board of Directors

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

Section 5.3 Term of Office of Members of Committees of the Board of Directors

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

Section 5.4 Committees of the Members

(a) A technical committee of the Members of the Consortium (the "Technical Committee") shall be established. Such Member Committee may have such Sub-Groups as from time to time may be approved by the Technical Committee, and the members of neither such Member Committee nor such Sub-Groups need be Directors. The Technical Committee and its Sub-Groups shall be the principal Member-level forum for the discussion and preliminary adoption of Specifications, white papers, best practices, subject to the review, and within the strategic direction established by, the Board of Directors, and such Member Committee shall otherwise have such rights and privileges, as shall from time to time be established by the Board of Directors, or as set forth in such Technical Committee rules and policies as shall have been previously adopted by the Board of Directors. The Technical Committee may make technical recommendations to the Board of Directors concerning Specifications, white papers, best practices, enhancements, and testing, may coordinate and implement the same, and may undertake such other tasks as may from time to time be established by the Board of Directors, provided that all Specifications, white papers, and best practices may only be finally adopted by Super Majority Vote of the Board of Directors.

(b) A collaboration committee of the Members of the Consortium (the "Collaboration Committee") shall be established, and may have such Sub-Groups as from time to time may be approved by the Collaboration Committee, and the members of neither such Member Committee nor such Sub-Groups need be Directors. The Collaboration Committee and its Sub-Groups shall be the principal Member-level forum for the discussion of activities intended to promote the collaboration with other industry members, subject to the review, and within the strategic direction established by, the Board of Directors, and such Member Committee shall otherwise have such rights and privileges as shall from time to time be established by the Board of Directors, or as set forth in such Collaboration Committee rules and policies as shall have been previously adopted by the Board of Directors. The Collaboration Committee may make recommendations to the Board of Directors concerning promotional matters relating to Consortium adopted Specifications, white papers, and best practices, may coordinate and implement the same, and may undertake such other tasks as may from time to time be permitted by the Board of Directors.

(c) From time to time, the Board of Directors may establish, by Super Majority Vote, additional Member Committees. Each Member, other than any Supporting Member, so long as it remains in compliance with all Membership Obligations, shall be entitled to appoint a representative or representatives to each such Member Committee as set forth in Article II, such representative(s) to have voting rights (if any) as set forth in Article II. Unless otherwise specified in these By-laws or by the Board of Directors, each Member Committee may have such sub-committees, working groups and special interest groups as from time to time may be approved by such Member Committee, within the strategic direction established by the Board of Directors (each a "Sub-Group"), and the members of neither such Member Committee nor its Sub-Groups need be Directors.

ARTICLE VI

OFFICERS

Section 6.1 Officers

The Officers of the Consortium shall be a Chairman, a Treasurer and a Secretary, each of whom shall also be a Director. The Consortium may also have, at the discretion of the Board of Directors, one (1) or more Vice-Chairmen, an Executive Director, one (1) or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers with such

titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3. The Chairman shall preside over meetings of the Board of Directors. One (1) person may hold two (2) or more offices unless the Certificate of Incorporation or these By-laws otherwise provide.

Section 6.2 Vacancies

A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in these By-laws for regular elections to such office and may be filled by the Board of Directors, at its discretion.

Section 6.3 Election

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

Section 6.4 Tenure

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

Section 6.5 Chairman

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

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

Section 6.6 Executive Director

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

Section 6.7 Vice-Chairmen

In the absence of the Chairman or in the event of his or her inability or refusal to act, a Vice-Chairman, or if there be more than one (1) Vice-Chairman, the Vice-Chairmen, in the order designated by the Board of Directors (or in the absence of any designation, then in the order determined by their tenure in office), shall perform the duties of the Chairman, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairman. The Vice-Chairmen shall perform such other duties and have such other powers as the Board of Directors or the Chairman may from time to time prescribe.

Section 6.8 Secretary

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

- (a) Prepare and maintain lists of Members and their addresses as required;
- (b) Attend all meetings of the Board of Directors and all meetings of the Members and record all the proceedings of the meetings of the Consortium and of the Board of Directors in a book to be kept for that purpose and perform like duties for the standing Board Committees when required;

(c) Give, or cause to be given, notice of all meetings of the Members and special meetings of the Board of Directors, and perform such other duties as may be from time to time prescribed by the Board of Directors, and be under their supervision; and

(d) Have custody of the corporate seal of the Consortium and the Secretary, or an Assistant Secretary, have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board of Directors may give general authority to any other Officer to affix the seal of the Consortium and to attest the affixing by such Officer's signature.

Section 6.9 Assistant Secretaries

The Assistant Secretary, or if there be more than one (1), the Assistant Secretaries in the order determined by the Board of Directors, the Chairman or the Secretary (or if there be no such determination, then in the order determined by their tenure in office), shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary and shall perform such other duties and have such other powers as the Board of Directors, the Chairman or the Secretary may from time to time prescribe. In the absence of the Secretary or any Assistant Secretary at any meeting of Members or Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

Section 6.10 Treasurer

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

Section 6.11 Compensation

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

ARTICLE VII

NOTICES

Section 7.1 Delivery

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

(b) Notice given pursuant to this section shall be deemed given: (1) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Director, when directed to the number for such Director as it appears on the records of the Consortium; (2) if by electronic mail to (A) a Member, when directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Director, when directed to the electronic mail address for such Director as it appears on the records of the Consortium; (3) if by a posting on an electronic network together with separate notice to the Member or Director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (4) if by any other form of electronic transmission, when directed to the Member or Director; (5) if by in-hand delivery or oral notice, at the time it is actually given; (6) if by mail, at the time when the same shall be deposited in the United States mail; and (7) if by commercial delivery carrier or similar means, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by the Consortium or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the Consortium that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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

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

Section 7.2 Waiver of Notice

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

ARTICLE VIII

INDEMNIFICATION

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

The Consortium shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Consortium) by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Consortium, or is or was serving at the request of the Consortium as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Consortium, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Consortium, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 8.2 Actions by or in the Right of the Consortium

The Consortium shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Consortium to procure a judgment in its favor by reason of the fact that he or she is or was a Director, Officer, employee or agent of the Consortium, or is or was serving at the request of the Consortium as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Consortium; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to

be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 Success on the Merits

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

Section 8.4 Specific Authorization

Any indemnification under Section 8.1 or 8.2 of this Article VIII (unless ordered by a court) shall be made by the Consortium only as authorized in the specific case upon a determination that indemnification of any person described in said Sections is proper in the circumstances because he or she has met the applicable standard of conduct set forth in said Sections. Such determination shall be made (1) by a majority vote of a such Directors who were not parties to such action, suit or proceeding, even though less than a quorum or (2) by the Members of the Consortium.

Section 8.5 Advance Payment

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

Section 8.6 Non-Exclusivity

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

Section 8.7 Jurisdiction of Delaware Court of Chancery

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

Section 8.8 Insurance

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

Section 8.9 Continuation of Indemnification and Advancement of Expenses

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

Section 8.10 Severability

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

Section 8.11 Intent of Article

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

ARTICLE IX

BOOKS AND RECORDS

Section 9.1 Books and Records

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

Section 9.2 Form of Records

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

Section 9.3 Reports to Directors, Members and Others

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

Section 9.4 Record Date

In order that the Consortium may determine the Members entitled to notice of or Voting Members entitled to vote at any meeting of Members or any adjournment thereof, or to express consent to corporate action in writing without a meeting, or entitled to receive payment of any distribution, if any, permitted by law and the Consortium's then current federal and state tax status, or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Membership or for the purpose of any other lawful action, the Board of Directors may fix, in advance, a record date, which shall not be more than sixty (60) days nor fewer than ten (10) days before the date of such meeting, nor prior to the adoption of the resolution by the Board of Directors fixing such record date. A determination of Members of record entitled to notice of or Voting Members entitled to vote at a meeting of Members shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting. If no record date is fixed, the record date for determining Members entitled to notice of or Voting Members entitled to vote at a meeting of Members shall be at the close of business on the day before the day on which notice is given or, if notice is waived, at the close of business on the day before the day on which the meeting is held. The record date for determining Members entitled to express consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is necessary, shall be the day on which the first written consent is delivered to the Consortium. The record date for determining Members entitled to express consent to corporate action in writing without a meeting, when prior action by the Board of Directors is necessary, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 9.5 Registered Members

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

ARTICLE X

CERTAIN TRANSACTIONS

Section 10.1 Transactions with Interested Parties

No contract or transaction between the Consortium and one (1) or more of its Directors or Officers, or between the Consortium and any other corporation, partnership, association, or other organization in which one (1) or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because such Director or Officer (or other director or officer) is present at or participates in the meeting of the Board of Directors or Board Committee which authorizes the contract or transaction or solely because his, her or their votes are counted for such purpose, if:

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

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

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

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

ARTICLE XI

GRANTS, CONTRACTS, LOANS, ETC.

Section 11.1 Grants

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

Section 11.2 Execution of Contracts

The Board of Directors may authorize any Officer, employee or agent of the Consortium, in the name and on behalf of the Consortium, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board of Directors to the contrary, the Chairman shall be authorized to execute such contracts and instruments on behalf of the Consortium.

Section 11.3 Checks, Drafts, Etc.

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

Section 11.4 Deposits

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

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Fiscal Year

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

Section 12.2 Reserves

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

Section 12.3 Seal

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

Section 12.4 Non-Disclosure

(a) Except as specifically provided to the contrary in such policies and procedures as may from time to time be approved by the Board of Directors, or with respect to Specifications and other work product approved for publication by the Board of Directors, all information disclosed by any participant (Member or otherwise) during any non-public official meeting or activity of the Consortium, including but not limited to Member meetings, Member Committee meetings, Sub-Group meetings, Board of Directors meetings, meetings of Board Committees and sub-committees thereof, electronic mail or the like (such information collectively, "Confidential Information"), shall be deemed to have been disclosed on a confidential basis. Each Member shall at all times keep all Confidential Information confidential, except with respect to other Members, and with respect to non-Members who have agreed in writing to confidentiality obligations regarding Confidential Information substantially similar to those contained herein; provided, however, that the foregoing obligation shall survive the termination, suspension or resignation of Membership of each Member; and provided, further, that such obligation shall not apply to information which, other than by means of a breach of duty imposed by these By-laws or any policies or procedures from time to time adopted by the Board of Directors, (i) is or becomes generally known to the public, (ii) is independently developed by or for such Member or any other party without restriction or (iii) is information generally released by the party that owns such information without restriction. Further, the term "Confidential Information" shall not include Residuals (as defined below) resulting from access to Confidential Information. The term "Residuals" means information contained in Confidential Information, such as general knowledge, ideas, concepts, know-how, professional skills, work experience and/or techniques, that is retained in the unaided memories of a recipient who has had access to Confidential Information. A recipient's memory is unaided if such recipient has not intentionally memorized such Confidential Information for the purpose of retaining and subsequently using or disclosing it. The foregoing shall not be deemed to grant to any Member or other recipient of Confidential Information a license under any Member's copyrights or patents.

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

Section 12.5 Limitation of Liability

IN ADDITION TO, AND WITHOUT LIMITING THE EFFECT OF SECTION 2.6(D) ABOVE, EXCEPT WITH RESPECT TO BREACH OF THE CONFIDENTIALITY OBLIGATIONS SET FORTH IN SECTION 12.4(A) OF THESE BY-LAWS, IN NO EVENT SHALL ANY MEMBER BE LIABLE TO ANY OTHER MEMBER FOR ANY CONSEQUENTIAL DAMAGES ARISING IN ANY MANNER BY REASON OF SUCH MEMBER'S MEMBERSHIP IN THE CONSORTIUM OR SUCH MEMBER'S ACTS OR OMISSIONS AS A MEMBER.

ARTICLE XIII

ANTITRUST COMPLIANCE

Section 13.1 General

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

Section 13.2 No Obligation to Endorse

No Member shall, by reason of its Membership or participation in the Consortium or otherwise, be obligated to license from the Consortium, use or endorse any Intellectual Property (as defined in Section 2.6) developed or endorsed by the Consortium, or to conform any of its products to any Specifications, white papers, or best practices developed or adopted by the Consortium.

ARTICLE XIV

AMENDMENTS

Except where such power is expressly limited by law or the Certificate of Incorporation or these By-laws as to any specific action, these By-laws may be altered, amended or repealed, and new By-laws may be adopted, in each case by Super Majority Vote of the Board of Directors or the affirmative vote of eighty-five percent (85%) of the Voting Members then in compliance with all Membership Obligations, at any annual meeting of the Voting Members or regular meeting of the Board of Directors or at any special meeting of the Voting Members or of the Board of Directors, provided, however, that in the case of a regular or special meeting of Voting Members, notice of such alteration, amendment, repeal or adoption of new By-laws shall be contained in the notice of such meeting.

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**RESOLUTIONS OF THE BOARD OF DIRECTORS
OF MESSAGING ANTI-ABUSE WORKING GROUP, INC.,
a Delaware non-stock not for profit corporation**

April 7, 2011

WHEREAS, at a meeting of the Board of Directors (the "Board") of Messaging Anti-Abuse Working Group, Inc., a Delaware non-stock not for profit corporation (the "Corporation") held on the date written above, there was presented to the Board a form of amended and restated bylaws revising certain provisions relating to the review, renewal, termination and suspension of memberships in the Corporation ("Second Amended and Restated Bylaws"); and,

WHEREAS, the Board believes that it is in the best interests of the Corporation and the members of the Corporation (the "Members") that the bylaws of the Corporation be amended and restated in the form presented to the Board.

NOW, THEREFORE, BE IT RESOLVED, that the Second Amended and Restated Bylaws, in the form presented to the Board, be, and hereby is, adopted.

RESOLVED FURTHER, that the Secretary of this Corporation be, and hereby is, authorized and directed to execute a certificate of the adoption of the Second Amended and Restated Bylaws and to insert such Second Amended and Restated Bylaws so certified in the Corporate Minute Book of this Corporation and to see that a copy of the Bylaws, as amended, is kept at the principal office for the transaction of business of this Corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation, or such other officers as they may hereafter designate, be, and hereby are, authorized to sign and deliver any other such documents and do any other such acts on behalf of the Corporation as are required in connection with or are necessary to effectuate the purpose and intent of these resolutions.

RESOLVED FURTHER, that any actions taken on the Corporation's behalf by any member of the Board or any officer, agent or attorney of the Corporation prior to the date of the foregoing resolutions adopted hereby that are within the authority conferred thereby, be, and hereby are, ratified, confirmed and approved as the acts and deeds of the Corporation.


(Remainder of page left blank intentionally)

CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of Messaging Anti-Abuse Working Group, Inc., a Delaware non-stock not for profit corporation, and that the foregoing Resolutions of the Board of Directors dated April 7, 2011, is a true and correct copy of the resolutions of the Board of Directors of the Corporation adopted by the Board at a meeting held on such date, which Resolutions have not been amended or revoked and are in full force and effect on the date hereof.

IN WITNESS WHEREOF, I have hereunto subscribed my name this April 7, 2011.

Executed at San Francisco, California.



Jerry Upton, Secretary

CERTIFICATE OF INCORPORATION
OF
MESSAGING ANTI-ABUSE WORKING GROUP, INC.

FIRST. The name of the corporation is Messaging Anti-Abuse Working Group, Inc. (the “Corporation”).

SECOND. The address of its registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington 19808, County of New Castle; and the name of the registered agent of the Corporation in the State of Delaware at such address is Corporation Service Company.

THIRD. The nature of the business or purposes to be conducted or promoted by the Corporation is to engage in any lawful act or activity for which corporations which are organized not for profit may be organized under the General Corporation Law of Delaware. Initially, the specific purposes of the Corporation are:

- (a) to develop and adopt open, accessible standards and specifications relating to communications (the “Specifications”);
- (b) to promote such specifications and solutions worldwide;
- (c) to provide for testing and conformity assessment of implementations in order to ensure and/or facilitate compliance with Specifications;
- (d) to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications; building interfaces to other standards organizations and key legislative bodies;
- (e) to develop codes of conduct and best practice; and
- (f) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Notwithstanding the foregoing, if the Board of Directors elects to seek and obtains an exemption from Federal taxation for the Corporation pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the “Code”), and until such time, if ever, as such exemption is denied or lost, the Corporation shall not be empowered to knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c) of the Code.

FOURTH. Except as provided in this Section, no part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its Members, members of its Board of Directors, 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 herein set forth, but only in a manner permitted by its tax exempt status at such times as the Corporation shall be so qualified.

FIFTH. The Board of Directors of the Corporation shall be, and shall (except as provided below) possess all of the powers of, the “Governing Body” of the Corporation as a not-for-profit membership corporation under Delaware General Corporation Law. The number of members of the Governing Body who shall be present or represented by proxy at any meeting of the Governing Body in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business shall be as stated in the by-laws of the Corporation, as from time to time amended. The business and affairs of the Corporation may be managed in a manner different from that set out in Section 141 of the Delaware General Corporation Law, to the extent described in the by-laws of the Corporation, as from time to time amended.

SIXTH. In the event of the liquidation, dissolution or winding up of the affairs of the Corporation (whether voluntary or by operation of law), the Board of Directors will, after paying or making any provision for the payment of all liabilities of the Corporation, distribute all of the assets of the Corporation as it sees fit, consistently with the contractual obligations of the Corporation. Notwithstanding the foregoing, if the Corporation is exempt from Federal taxation pursuant to Section 501(a) of the Code at the time of any such liquidation, dissolution or winding up of the affairs of the Corporation, then the Board of Directors shall make such distribution in a manner which the Board of Directors believes is consistent with such tax exempt status and the applicable requirements of Section 501(c) of the Code and any related regulations.

SEVENTH. The Corporation shall be a membership corporation and shall not have the authority to issue capital stock. The conditions of membership in the Corporation shall be as stated in the by-laws of the Corporation, as from time to time amended.

EIGHTH. All voting power of the Members of the Corporation shall be vested in such class or classes of Members as from time to time shall be provided for in the by-laws of the Corporation. The number of Members having voting power who shall be present or represented by proxy at any meeting of the Members in order to constitute a quorum for, and the votes that shall be necessary for, the transaction of any business shall be as stated from time to time in the by-laws of the Corporation.

NINTH. The name and mailing address of the sole incorporator is as follows:

<u>Name</u>	<u>Mailing Address</u>
Andrew Updegrove	Gesmer Updegrove LLP 40 Broad Street Boston, MA 02109

TENTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware:

A. The Board of Directors of the Corporation is expressly authorized to adopt, amend or repeal the by-laws of the Corporation.

B. Elections of the Board of Directors need not be by written ballot unless the by-laws of the Corporation so provide.

C. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting and without prior notice if a majority of the Directors then in office (as qualified below), or such greater number of Directors as may be required by law or the by-laws of the Corporation for the taking of any such action at a meeting, consent thereto in writing or by electronic transmission, and the writing or writings, or electronic transmission or transmissions, are filed with the minutes of proceedings of the Board of Directors, provided that:

(i) such written consent shall have been sent simultaneously to all Directors then in office for their consideration;

(ii) prompt written notice of any action so taken is given to those Directors who have not consented in writing or by electronic transmission; and

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

Notwithstanding the foregoing, the ability of two or more non-consenting Directors to prevent the taking of an action by written consent under clause (C)(iii) of this Tenth Article shall not prevent any such action from being taken at a later date at an actual meeting of the Board of Directors. For purposes of determining the number of Directors "then in office," no Director whose attendance and voting rights have been suspended shall be counted.

D. Any consent required to be given in writing by law, this Certificate of Incorporation or the by-laws may be given in the form of electronic transmission.

E. Any Member of the Corporation which nominated or appointed a person that is serving as a Director, or such Director, may designate an alternate person to serve temporarily as a Director during the absence or other unavailability of the nominated or appointed Director. In the event that neither a Director nor his or her alternate is able to attend a meeting of the Board of Directors in person or by telephone conference call, such Director may deliver a written vote in advance of such meeting in the manner as from time to time provided in the by-laws, and such vote shall be effective as if delivered in person at such meeting.

ELEVENTH. The Corporation eliminates the personal liability of each member of the Board of Directors to the Corporation or the Members for monetary damages for breach of fiduciary duty as a Director, provided that the foregoing shall not eliminate the liability of a

Director (i) for any breach of such Director's duty of loyalty to the Corporation or the Members, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of Title 8 of the Delaware Code or (iv) for any transaction from which such Director derived an improper personal benefit.

TWELFTH. The Corporation reserves the right to amend or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon each Member herein are granted subject to this reservation.

THE UNDERSIGNED, being the sole incorporator, for the purpose of forming a corporation under the General Corporation law of the State of Delaware, does make, file and record this Certificate of Incorporation, does certify that the facts herein stated are true and, accordingly, has hereto set his hand this 10th day of May, 2004.

Andrew Updegrove
Sole Incorporator