

Cover Page to:

Web3D Consortium Membership Agreement

Completed by Signatory:

Guidelines to completing this agreement

To Signatory: This agreement is made to enable a company, academic institution, government institution or individual to join the Web3D Consortium.

You should enter the name of your company or institute, or your own name if you are applying to be a Professional Member, on this cover page and complete and sign the signature page on two complete copies of this agreement and mail those agreements to the contact below. One counter-signed copy of the agreement will be returned to you for your records. If you wish, you may omit attachments A and B from the mailed copies of the agreement.

Your membership privileges shall commence once we have received both signed agreements and your membership dues.

Organizational Members have the option of applying for Directing Membership of the Consortium. If approved by the Web3D Board of Directors, Directing Membership gives you the right to designate a Director to the Board. If you wish to be considered for a Directing Membership please sign the appropriate box on the signature page.

Mailing address for signed agreements:

Web3D Consortium,
325 Sharon Park Drive, Suite 623
Menlo Park, CA 94025 USA

WEB3D CONSORTIUM MEMBERSHIP AGREEMENT

This Web3D Consortium Membership Agreement ("Agreement") is entered on the last of the dates on the signature page below ("Effective Date") between the Web3D Consortium Inc. ("Consortium") having a place of business at 225 Bush Street, 16th Floor, San Francisco, CA 94104 USA and signing party on signature page ("Signatory").

1. DEFINITIONS

"Board" means the Board of Directors of the Consortium.

"Member" means any Professional or Organizational Member of the Consortium.

"Secretary" means the Secretary of the Consortium.

"Specification" means a specification produced by a Consortium working group.

2. PURPOSE AND SCOPE

Signatory hereby agrees to become a Member of the Consortium, and agrees to conform to all of the applicable terms and conditions set forth in this Agreement and Attachment A (Web3D Consortium Intellectual Property Rights Policy), and Attachment B (Web3D Consortium Bylaws) each of which is incorporated herein and made a part hereof.

3. CONSORTIUM MEMBERSHIP

3.1 Membership and Dues

Signatory's membership rights and responsibilities as defined herein shall commence on Effective Date and receipt of Signatory's membership dues. Dues shall be for the twelve months from the Effective Date and shall be due and payable each successive year on that same date provided membership is retained by Signatory. If Signatory is delinquent in the payment of dues, membership rights, including all voting rights (if any), shall be deemed revoked upon written notice from the Corporation until all delinquent dues are paid. No refund of dues shall apply in the event of termination, suspension or withdrawal of membership.

The Board and Signatory may mutually agree to bring forward the date that dues are payable for Signatory together with a one-off, pro-rata reduction in payable dues for the number of months the due date is bought forward, together with a one-off reduction in membership dues at the Board's sole discretion.

3.2 Directing Membership

If Signatory is an Organizational Member, Signatory may apply to become a Directing Member by signing the appropriate box on signature page below or by sending a written request to the Secretary at any time during Signatory's membership. If the Board approves the application then the Signatory shall be notified in writing that they are accepted as a Directing Member and ensuing rights shall commence on receipt of the appropriate dues. If Signatory's Directing Member status is approved at a time different to the Effective Date or an anniversary of the Effective Date then the increased dues payable is the difference between Organizational and Directing Membership dues multiplied by the number of whole or partial months until the Signatory's renewal date divided by twelve (12). If the Signatory's application to become a Directing Member is declined this in no way affects Signatory's Organizational Membership.

3.3 Term of Membership in the Consortium

Signatory's membership in the Consortium may, at Signatory's discretion, continue for as long as the Consortium remains active, unless terminated pursuant to this section below; upon termination of membership of any particular Member pursuant to this section below, this Agreement, together with Attachments A and B, shall be considered terminated with respect to that Member.

3.4 Non-Voluntary Termination of Membership in the Consortium

In the event of a material default or breach of this Agreement by Signatory, if Signatory does not cure such default or breach within thirty (30) days after its receipt of written notice thereof from the Secretary, such Signatory's membership in the Consortium may be terminated at any time thereafter as defined in the Bylaws.

3.5 Voluntary Termination of Membership

Signatory may resign from the Consortium and terminate its membership in the Consortium at any time by providing written notice thereof to the Secretary. Such resignation and termination is effective on the date such notice is received by the Secretary.

3.6 Obligations on Termination

After Signatory's membership in the Consortium has terminated, Signatory shall have no further obligations under this Agreement; provided that a) any obligation to pay unpaid dues shall survive and; b) all rights and licenses granted by Signatory under Attachments hereto and all confidentiality and non-disclosure obligations of Signatory hereunder shall survive. All rights and licenses granted to Signatory, in its capacity as a Member of the Consortium, shall survive Signatory's departure from the Consortium.

3.7 Costs and Expenses

Signatory will be responsible only for its own costs and expenses incurred in matters and activities arising out of this Agreement.

4. CONFIDENTIAL INFORMATION

4.1 Confidential Information

Information that is confidential to the Consortium Membership ("Confidential Information") shall include: a) all materials generated by the Consortium and by Members on behalf of the Consortium, and not specifically designated as non-Confidential by the Board, including any draft specifications, working group mailing lists and minutes; and b) any information submitted by any Member to the Consortium. Each Member waives confidentiality interests that the Member has with respect to any Contribution submitted by any Member to the Consortium, upon that Contribution being incorporated into a Draft Specification or Ratified Specification that releases publicly. Notwithstanding the above, Confidential Information will not include any information that is (a) rightfully in the public domain other than by a breach of a duty to the disclosing party; (b) rightfully received from a third party without any obligation of confidentiality; (c) rightfully known to the receiving party without any limitation on use or disclosure prior to its receipt from the disclosing party; (d) independently developed by employees of the receiving party; (e) generally made available to third parties by the disclosing party without restriction on disclosure; or (f) disclosed in furtherance of an order to disclose issued by a court of proper jurisdiction; provided, however, in such instance, the Signatory having received the Confidential Information will provide prompt notice to Consortium in order to facilitate Consortium's legal intercession.

4.2 Use of Confidential Information

Members may use Confidential Information in any Consortium-related activities and disclose such Confidential Information to any other Member in connection with activities related to this Agreement.

4.3 Confidentiality Obligation

Signatory will maintain all Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances and will not use, disclose or copy the Confidential Information (other than that party's Contributions) except as necessary for its employees with a need to know to evaluate and comment thereon. Signatory will mark any copies it makes of such Confidential Information "Web3D Confidential," "Web3D Proprietary" or with a similar legend and shall reproduce all copyright notices and disclaimers contained in the Confidential Information. Unless the parties agree otherwise, this obligation of confidentiality will expire two (2) years from the date of disclosure to Signatory.

4.4 Return of Confidential Information

Upon its withdrawal, Signatory will return to the Consortium all tangible copies of the Confidential Information that are in its possession, and destroy all intangible copies of the Confidential Information that are in its possession. Within twenty (20) days of the Withdrawal Date Contributor will certify in writing to the Secretary that these actions have been taken.

5. TRADEMARKS

5.1 Non-assertion of Rights in Marks

Signatory agrees not to assert against Consortium or any Member any trademark, trade name, or similar rights it may have now or may obtain in the future in the names Web3D, Web3D Consortium and X3D and any other marks obtained by the Consortium in the future ("Marks"). Member will not use or adopt any trademarks for any product, service, or specification likely to cause confusion with the Marks.

5.2 Use of Trademarks

Member agrees that it will only use the Marks to promote its membership and label and promote products in which all included features and functions of Final Specification reasonably capable of being implemented have been so implemented. Signatory agrees to comply with any trademark usage guidelines that the Consortium may issue from time to time, including restrictions of use of Marks for products to be tested for compliance with Final Specifications with conformance tests defined by the Consortium.

5.3 No Obligation to Use Marks

Member is not obligated to use any of the Marks on any product, advertising, or on any other material.

6. GENERAL

6.1 Assignment

Neither this Agreement nor any rights or obligations under this Agreement, in whole or in part, are assignable or otherwise transferable by the Signatory without the prior written approval of Consortium, provided however, that this Agreement may be assigned by the Signatory to a purchaser of all, or substantially all, of that Signatory's business or assets, whether by merger, sale of assets, sale of stock, or otherwise without such approval.

6.2 No Other Rights

No license, rights or title in or to any software or any intellectual property are provided hereunder, either expressly or by implication, estoppel or otherwise, except as may be expressly provided in this Agreement or in Attachment A.

6.3 No Agency

The parties hereto are independent parties, and nothing herein shall be construed to create an agency, joint venture, partnership or other form of business association between the parties hereto.

6.4 Notices

Any notices under this Agreement shall be sent by: a) registered mail; b) tracked overnight carrier or c) email transmission where the recipient specifically replies to acknowledge receipt.

6.5 Governing Law

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California, excluding its choice of laws rules. The parties hereby agree that any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement shall be subject to the exclusive jurisdiction of the California state courts of Santa Clara County, California (or, if there is federal jurisdiction, the United States District Court for the Northern District of California, San Jose), and the parties agree to submit to the personal and exclusive jurisdiction and venue of these courts.

6.6 Complete Agreement

This Agreement and its Attachments constitute the complete and exclusive statement of the agreement between the parties, and supersedes all previous proposals, oral or written, and all other communications or understandings between the parties relating to the subject matter of this Agreement. Each party acknowledges that it has not relied upon any representation or statement not contained herein. This Agreement shall not be modified, amended or in any way altered except by an instrument in writing signed by the Signatory and the Consortium hereto. Notwithstanding the preceding sentence, changes to the Attachments A and B adopted in accordance with the voting policies of the Consortium are effective as to all Members upon such adoption.

6.7 No Warranty

All parties acknowledge that all information provided under this Agreement, including any Specifications and Contributions, are provided "AS IS" WITH NO WARRANTIES OR CONDITIONS WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OR CONDITION OF MERCHANTABILITY, SECURITY, SATISFACTORY QUALITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, ERROR-FREE OPERATION, OR ANY WARRANTY OR CONDITION OTHERWISE ARISING OUT OF ANY PROPOSAL, CONTRIBUTION, SPECIFICATION, OR SAMPLE.

6.8 Limitation of Liability

IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, SPECIAL OR EXEMPLARY DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY, CONDITION OR OTHERWISE, ARISING IN ANY WAY IN RELATION TO THIS OR ANY OTHER RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

6.9 Authority to Sign

The person signing on behalf of Signatory hereby represents and warrants that he/she has the appropriate authorization to bind the Signatory in this Agreement.

**WEB3D MEMBERSHIP AGREEMENT
SIGNATURE PAGE**

Web3D Consortium Inc.	_____ Signatory

	Street address of Signatory

	City, State, ZIP, of Signatory
_____	_____
Authorized signature in behalf of Web3D	Authorized signature in behalf of Signatory
_____	_____
Printed name of Web3D signature	Printed name of signatory
_____	_____
Title of Web3D signature	Title of signatory
_____	_____
Date of signature	Date of signature

Signatory wishes to apply for Directing Membership (Organizational Members Only)

Authorized signature on behalf of Signatory

ATTACHMENT A WEB3D CONSORTIUM INTELLECTUAL PROPERTY (“IP”) RIGHTS POLICY

1. DEFINITIONS

“Affiliate” means any entity that is directly or indirectly controlled by a party to this Agreement. For purposes of this definition, control means direct or indirect ownership of or the right to exercise (a) greater than fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of an entity; or (b) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for such entity.

“Consortium” means the Web3D Consortium Inc.

“Contribution” means written information submitted to the Consortium for the purpose of consideration and adoption by the Consortium for inclusion in a specification.

“Encumbered Technology” means technology with respect to which a patent holder is unwilling to grant the Reciprocal License.

“Exclusion Certificate” means a written communication delivered to the Secretary that; (i) certifies that a Member does not grant the Reciprocal License with respect to specific Necessary Patent Claims for a Draft Specification; and (ii) optionally, includes Specific License Terms if the Member desires to grant a license to the specifically excluded Necessary Patent Claims.

“Final Draft” means a final draft of a Specification produced by a Consortium Working Group that will be forwarded to the Board for Ratification and subsequent public release.

“Member” means any Professional or Organizational Member of the Consortium.

“Membership Agreement” means the agreement signed by a Member to join the Consortium and to which this Attachment A is attached.

“Necessary Patent Claims” means claims of a patent or patent application, other than design patents and design registrations, issued or filed in any country which a Member or its Affiliates has the right to grant licenses, at any time during the term of the Agreement, and which are necessarily infringed by all fully compliant implementations of a Ratified Specification and all subsequent specifications to the extent that the subsequent specifications incorporate that Ratified Specification. Necessary Patent Claims do not include any claims (i) other than those set forth above even if contained in the same patent as Necessary Patent Claims; (ii) that read solely on any implementations of any portion of the Ratified Specification that are not within the bounds of the Scope; (iii) that it is possible to avoid infringing because there is a commercially plausible non-infringing alternative for implementing such portions of the Ratified Specification or (iv) that, if licensed, would require a payment of royalties by the licensor to unaffiliated third parties.

“Notice of Exclusion Period” means a notice clearly and conspicuously titled and clearly indicating the specific dates on which an Exclusion Period commences and terminates.

“Ratification” means the Board approving a Final Draft specification for public release.

“Ratified Specification” means a specification ratified by the Board for public release.

“Reciprocal License” means the perpetual, royalty-free, fully paid, worldwide, nonexclusive license under any Necessary Patent Claims (including pending applications upon issuance of a patent thereon) owned or controlled by Member (or hereafter acquired) that read on a Final Ratified Specification to make, have made, use, import, offer to sell and sell implementations of the Final Ratified Specification or portions thereof, together with the right without royalty or fee to sublicense third parties under this license for the distribution of implementations through the normal tiers of distribution to end users or to resellers, distributors, dealers and authorized manufacturers and others in the distribution channel and to permit such entities to reproduce and distribute such implementations or portions thereof.

“Secretary” means the Secretary of the Consortium.

“Scope” means the protocols, register models, application program interfaces, service provider interfaces, and data structures solely to the extent disclosed with particularity in a Ratified Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect, or communicate as defined within a Ratified Specification. Notwithstanding the foregoing, the Scope does not include: (a) any enabling technologies that may be necessary to make or use any product or portion of any product that complies with the Ratified Specification, but are not themselves expressly set forth in the Ratified Specification (e.g. semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, and so on); or (b) the implementation of other published specifications developed elsewhere but referred to in the body of the Ratified Specification; or (c) any portions or combinations of any product whose purpose is not required for compliance with the Ratified Specification. For purposes of this definition, the Ratified Specification will include only architectural and interconnection requirements and will not include any implementation examples unless such implementation examples are expressly identified as being included as part of the Ratified Specification.

“Specific License Terms” means a minimal set of terms and conditions that a license must address in order for the Consortium to consider incorporating Encumbered Technology into a Ratified Specification. The minimal set of terms shall include: price (fees and royalties), geographical scope, revocability, whether license is perpetual, definition of licensed patents, sublicense conditions (if any), term of license agreement, termination conditions, whether licensor can defensively terminate license upon suit against them by licensees, and reciprocity. Notwithstanding any of the foregoing, however, in all instances the Limited Patent License shall otherwise be under reasonable and non-discriminatory terms.

“Working Group” means a committee of Members to create a Draft Specification as defined in the Bylaws in Attachment B.

2. LICENSES

2.1 Copyright License

Each Member grants to the Consortium a worldwide, irrevocable, non-exclusive, non-transferable copyright license for any Ratified Specification on the date of Ratification to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Member solely for the purposes of developing, publishing and distributing Ratified Specifications and related materials, as well as products based on such documents.

2.2 Reciprocal License Grant

Each Member agrees to grant a Reciprocal License under any of its Necessary Patent Claims not excluded in accordance with the following sections for any Ratified Specification on the date of Ratification in reciprocity to all other Members that also grant a Reciprocal License to Member. Such Reciprocal License is granted whether or not the Member ever had any knowledge of the existence of such Necessary Patent Claims. Further, any Member shall have the right to suspend any Reciprocal License granted by that Member to any other Member ("Plaintiff") in case the Plaintiff initiates any lawsuit or other legal proceeding against the Member.

3. DISCLOSURE OF NECESSARY PATENT CLAIMS

3.1 Consortium Responsibility

The Consortium shall not be responsible for identifying patent rights for which a license may be required, or for conducting inquiries into the legal validity or scope of those patents that are brought to its attention.

3.2 No Member Disclosure Necessary

A Member is not required to disclose a Necessary Patent Claim owned or controlled by that Member if the Member commits to license such Necessary Patent Claim according to the terms and conditions of the Reciprocal License.

3.3 IP Disclosures for Draft Specifications

If any Consortium representative of a Member organization has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to that Member's Contributions or any other aspect of a draft specification that will not be licensed under the Reciprocal License, the Consortium representative of such Member must disclose those known Necessary Patent Claims ("IP Disclosure") together with the submission of a Contribution or as soon as is reasonably possible to both the Secretary and the Working Group chair. In satisfying the disclosure obligation set forth herein, Members are not required to conduct searches of their patent portfolios, nor are they required to disclose Necessary Patent Claims of other Members or other third-party patents.

3.4 Content of IP Disclosures

An IP Disclosure must identify in writing: a) the patent holder(s); b) for each issued patent and published patent application containing a Necessary Patent Claim the patent number or publication number, respectively; c) for a pending unpublished patent application containing a Necessary Patent Claim, the technology covered by the application; d) reasonable identification of the specific parts of specifications whose implementation may be covered by the Necessary Patent Claims; e) a statement as to whether the identified Necessary Patent Claims will be made available under the Reciprocal License. If the Necessary Claims are not to be made available under the Reciprocal License then the IP Disclosure must contain reasonably sufficient detail so as to enable the Consortium and Members either to exclude the subject inventions from the specification or to develop a commercially reasonable non-infringing implementation. This disclosure requirement may be accompanied by submitting any of the following, in the Member's sole discretion: (i) Specific License Terms for any Necessary Patent Claims not to be made available under the Reciprocal License; (ii) the entire patent application including amended and newly added claims, as well as the effective filing date.

3.5 Waiver of Disclosure Obligation

The disclosure obligation set forth in the previous sections shall not apply if both: (1) confidentiality obligations in a joint development agreement between a Member and a third party prohibit disclosure of the unpublished application, and (2) the joint development agreement was executed prior to the Member's execution of the Agreement; provided, however, the unpublished application must be disclosed upon publication, upon issuance or to the extent that other circumstances render it non-confidential.

3.6 IP Disclosure Binding

If the Member proposes Specific License Terms in the IP Disclosure that are subsequently accepted by the Consortium, and are required by the Final Draft, then the Member is irrevocably required to grant a license under such Specific License Terms for the Necessary Patent Claims.

3.7 Confidentiality of IP Disclosures

Prior to the date on which a Ratified Specification relating to an IP Disclosure is made public, Members and the Consortium shall not make public the content of any Member's IP Disclosure outside of the Consortium. IP Disclosures received with respect to a particular Specification shall be made public when the Specification is made public. Each Specification shall include suitable Consortium approved disclaimer language.

3.8 Procedures for Patent Disclosures

Any IP Disclosure must be submitted in writing addressed to the Consortium Board and the Working Group chair and the Consortium shall post IP Disclosures on a Member-only accessible Consortium website promptly upon receipt.

3.9 Termination of Disclosure Obligations

The disclosure obligations described in this section for a Draft Specification terminate upon Ratification of the Specification by the Consortium or when a Working Group or the Consortium formally indicates in writing that work on the Draft Specification has terminated without adoption by the Consortium.

4. EXCLUSION PERIODS AND CERTIFICATES

4.1 Notice of Exclusion Period

Promptly upon a Working Group's issuance of a Final Draft, the Working Group chair shall request that the Board issue a Notice of Exclusion Period to all Members notifying that a thirty (30) day period (the "Exclusion Period") has commenced. The Notice of Exclusion Period shall clearly indicate the location of the Final Draft on the Consortium web-site and the deadline for the receipt of Exclusions Certificates as defined below. At the end of the Exclusion Period the Board will vote for Ratification of the Specification or establish an IP Committee as defined below.

4.2 IP Exclusion Certificate

Prior to expiration of the Exclusion Period, any Member may submit an IP Disclosure accompanied by a signed IP Exclusion Certificate for the Final Draft to both the Secretary and the Working Group chair. An IP Exclusion Certificate effectively excludes any disclosed Necessary Patent Claims whether or not the IP Disclosure includes Specific License Terms under which the Member is willing to license the Necessary Patent Claims. If the Member proposes Specific License Terms that are accepted by the Consortium, then the Member is irrevocably required to grant a license under such Specific License Terms for the Necessary Patent Claims.

4.3 Failure to Submit IP Exclusion Certificate

If a Member fails to submit an Exclusion Certificate prior to the expiration of an applicable Exclusion Period, the Member shall be deemed to have granted the Reciprocal License for that Final Draft.

5. WORKING GROUP EXCLUSION CERTIFICATE

5.1 Working Group Exclusion Certificate

Any Member may deliver a written Working Group Exclusion Certificate to the Secretary notifying that the Member shall not grant a Reciprocal License for any Final Drafts produced by that Working Group following the date of the issuance of the certificate. Any previously granted licenses for any specifications shall not be affected. The Board shall accept said certificate if the Member has not attended any Working Group meetings since the last Final Specification was produced by the Working Group. On acceptance the Consortium shall notify the Member in writing and shall post the Working Group Exclusion Certificate on a Member-only accessible Consortium website.

5.2 Meeting Attendance

If the Member that has submitted a Working Group Exclusion Certificate attends, in person or by teleconference, any meeting of that Working Group then that Working Group Exclusion Certificate shall be rescinded at the date of the first attendance and that Member shall be subject to licensing requirements for any subsequent specifications produced by that Working Group and the Certificate removed from the Consortium web-site. After rescinding a Working Group Exclusion Certificate through attendance, the Member may re-submit a Working Group Exclusion Certificate after the Working Group has produced any subsequent Final Draft.

5.3 Ongoing Requirement for IP Disclosures

A Working Group Exclusion Certificate does not exclude a Consortium representative of a Member that has actual knowledge of claims that may be Necessary Patent Claims owned or controlled by that Member with respect to any aspect of any Consortium draft specification that will not be licensed under the Reciprocal License from making an IP Disclosure as specified above.

5.4 Failure to Submit Working Group Exclusion Certificate

If a Member fails to submit a Working Group Exclusion Certificate prior to the expiration of an applicable Exclusion Period, the Member shall be deemed to have granted the Reciprocal License for that Ratified Specification.

6. RECIPROCAL LICENSE CERTIFICATE

At any time during the creation of a draft specification or during the Exclusion Period for a Final Draft any Member may make an IP Disclosure accompanied by a signed certificate ("Reciprocal License Certificate") certifying Member's grant of the Reciprocal License for disclosed Necessary Patent Claims for, or expected to be for, a Final Draft. A Reciprocal License Certificate may be accompanied by, in the Member's sole discretion, the results of any IP searches conducted by the contributor, or any prior publicly available prior art, that indicate that the Necessary Patent Claims are not subject to third-party IP claims.

7. EXISTING SPECIFICATIONS

7.1 New Member Reciprocal License Grant

By signing and submitting a Membership Agreement, a new Member agrees to grant a Reciprocal License for the then-current version of all Ratified Consortium Specifications as of the joining date of the Member, unless, within sixty (60) days of the submission of the Agreement, the Member submits a Working Group Exclusion Certificate as set forth herein.

7.2 Member Patent Purchase

An existing Member purchasing a patent agrees to grant the Reciprocal License for the then-current version of Ratified Specifications as of the date of purchase, unless, within six (6) months after purchase of the patent the Member submits an Exclusion Certificate or Working Group Exclusion Certificate as set forth herein, that excludes the obligation to grant a Reciprocal License for the patent. After such period any non-excluded Necessary Patent Claims that shall be deemed to be licensed under the Reciprocal License.

8. MEMBER INITIATED DISCLOSURE REQUEST

8.1 Member Request

A Member may request in writing that the Secretary issue a written request from the Board delivered to another Member requesting that the other Member disclose in writing the relevance of a specific patent or patents to a draft specification being discussed in a Working Group ("Disclosure Request"). A Disclosure Request is subject to approval by the Board. If approved, the Disclosure Request shall be sent in writing by the Secretary on behalf of the Consortium to the applicable Member and shall include the Member's reasons for making the request, the draft specification in question, and any relevant meeting minutes and other documents.

8.2 Disclosure in Response to a Disclosure Request

Any Consortium representative in a Member organization who has received from the Secretary a Disclosure Request with respect to a draft specification, or any person in a Member organization who has received, either directly or indirectly, a Disclosure Request from the Consortium representative of that Member organization; and who has actual knowledge of claims that are Necessary Patent Claims owned or controlled by that Member organization must disclose the known Necessary Patent Claims in accordance with this policy as soon as reasonably possible after receipt of a Disclosure Request.

8.3 Failure to Comply to a Disclosure Request

A Member who does not comply with the disclosure obligations set forth in this section automatically grants the Reciprocal License for any Necessary Patent Claim(s) that the Member failed to disclose. Any attempt to exclude any such undisclosed Necessary Patent Claim(s) is ineffective and null and void.

9. WITHDRAWAL

9.1 No Withdrawal

Contributions, once accepted by the Consortium, may not be withdrawn.

9.2 Survival of License

A Member's obligations to license made prior to withdrawal from the Consortium shall survive such withdrawal, and shall extend to all Licensees, including Members that join the Consortium after the withdrawing Member's withdrawal.

9.3 Exclusion upon Withdrawal

If a Member withdraws from the Consortium prior to the expiration of the applicable Exclusion Period, then the Member may exclude patents the Member is not already obligated to license before the expiration of the applicable Exclusion Period. Failure to exclude will result in the former Member granting the Reciprocal License.

9.4 Rights after Withdrawal

Except as described above, a prior Member shall have no other obligations to the Consortium as to technologies or IP rights developed by the Member after its withdrawal from the Consortium.

10. THIRD-PARTY TECHNOLOGY

Nothing in the Consortium Membership Agreement shall compel nor prevent the Consortium from including in a draft specification or Ratified Specification a reference to, or suggestion to adopt or employ, a non-Member technology, whether or not such third-party technology must be licensed on a royalty-bearing or royalty-free basis in order to avoid infringement or intellectual and/or proprietary rights.

11. IP COMMITTEE FOR ENCUMBERED TECHNOLOGY

11.1 Formation and Purpose

The Board shall create a committee ("IP Committee") to investigate any IP issue including receipt by the Consortium of a notice in writing (an "IP Statement") in which a Member or third party ("IP Claimant") asserts, claims, or otherwise references an intellectual property right relative to any Draft or Ratified Specification, or a Member's delivery of an Exclusion Certificate. The IP Committee shall investigate the implications of any IP issues and report any recommendations to the Board.

11.2 Constraints

The IP Committee shall not investigate or discuss (orally or in writing) the validity or invalidity of any intellectual property claims or opinions as to infringement or non-infringement of the intellectual property in the Encumbered Technology.

11.3 Membership

Any Member may be represented on the IP Committee by legal and/or engineering personnel. A Member with an ownership interest in the patents or patent applications under investigation may be excluded from a meeting of the Committee at the discretion of the Committee. An IP Committee Member will serve as chair of the IP Committee.

11.4 Reporting

The IP Committee shall provide a report of its current status and/or results to the Board within ninety (90) days of the date of committee formation. The report may be presented to the Board orally or in writing and shall be the confidential information of the Consortium and shall be treated by Members accordingly. The report may include a request for Board approval of an extension of time to provide the report.

11.5 Term

The IP Committee shall have an initial term of ninety (90) days from the date of committee formation. The IP Committee shall terminate automatically unless: a) The Board terminates the IP Committee prior to the expiration of the initial term; or b) the Board extends the duration of the IP Committee beyond the initial term. An extension must indicate a specific duration, not to exceed ninety (90) days from the expiration of the immediately preceding term. Further extensions may be requested by the IP Committee and approved by the Board in a similar manner.

ATTACHMENT B

BY-LAWS OF THE WEB3D CONSORTIUM

1. DEFINITIONS

“Corporation” shall mean “The Web3D Consortium, Inc.”.

“Organizational Member” shall mean a corporate or academic entity that has executed the Corporation’s Membership Agreement and has been accepted as a statutory Member of the Corporation.

“Directing Member” shall mean an Organizational Member that elects to pay an increased level of membership dues and whose Directing Member status is approved by the Board.

“Professional Member” shall mean an individual that has signed the Corporation’s Membership Agreement and has been accepted as a non-statutory associate Member of the Corporation.

“Member” shall mean an entity or individual that is either an Organizational Member or a Professional Member.

2. OFFICES

2.1 PRINCIPAL OFFICE

The principal office of the Corporation is located in San Francisco, State of California, USA.

2.2 CHANGE OF ADDRESS

The designation of the county or state of the Corporation’s principal office may be changed by the Board of Directors.

2.3 OTHER OFFICES

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

3. NONPROFIT PURPOSES AND ANTITRUST

3.1 IRC SECTION 501 (c) (6) PURPOSES

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

3.2 GENERAL AND SPECIFIC OBJECTIVES AND PURPOSES

(a) General Purpose. The Corporation is a nonprofit mutual benefit corporation organized under the Nonprofit Mutual Benefit Corporation Law to engage in any lawful act or activity, other than credit union business, for which a corporation may be organized under law.

(b) Specific Purposes. In addition to the foregoing general purposes, the Corporation is formed to create and encourage market deployment of open, royalty-free standards that enable the communication of real-time 3D across applications, networks, and XML web services and promote the foregoing in cooperation and conformance with pre-existing and accepted industry standards and specifications.

3.3 ANTITRUST COMPLIANCE

The Members are committed to fostering open competition in the development of products and services based on open standard application programming interfaces. The Members understand that in certain lines of business they are or may be direct competitors and that it is imperative that they and their representatives act in a manner which does not violate any state, federal or international laws and regulations relating to antitrust or the promotion of competition. Without limiting the generality of the foregoing, Members should not participate with each other in communications regarding costs, prices, quantity or quality of production levels, methods or channels of distribution, markets, customers, exclusion of competitors or any other topic which may be construed as a violation of antitrust laws. Accordingly, each Member will counsel its representatives who participate in any activities as part of the Corporation of the importance of limiting the scope of their discussions and communications to the topics that relate to the purposes of the Corporation, whether or not such discussions and communications take place during formal meetings, informal gatherings, or otherwise.

4. MEMBERSHIP PROVISIONS

4.1 CLASSES AND RIGHTS OF MEMBERS

Any individual, firm, partnership, corporation, unincorporated association, academic institution or government body with a demonstrated interest in promoting the cause(s) of the Corporation, may apply for membership in the Corporation.

The Corporation shall have three classes of members, designated as Organizational Members, Professional Members and Directing Members.

(a) Rights of Directing Members. Directing Members shall each have the right to: appoint one (1) representative to the Board of Directors; vote on an amendment to these bylaws; vote in all elections of the Board; be nominated and serve as an Officer of the Corporation; participate in working groups with a single vote in the working group(s) in which such Directing Member is a participant; attend all Member meetings; access all draft and published documents of the corporation and as described in these bylaws and such other privileges and benefits as may be established by the Board of Directors.

(b) Rights of Organizational Members. Organizational Members shall each have the right to: nominate one (1) representative to stand for election to the Board; vote on an amendment to these bylaws; vote in all elections of the Board; be nominated and serve as an Officer of the Corporation; participate in working groups with a single vote in the working group(s) in which such Organizational Member is a participant; attend all Member meetings; access all draft and published documents of the corporation as described in these bylaws and such other privileges and benefits as may be established by the Board of Directors.

(c) Rights of Professional Members. Professional Members shall each have the right to: stand for election to the Board; vote in all elections of the Board; be nominated and serve as an Officer of the Corporation; participate in any working group; attend all Member meetings; access all draft and published documents of the corporation as described in these bylaws and such other privileges and benefits as may be established by the Board of Directors. Adopters are not statutory Members of the Corporation and shall have no right to vote on amending these By-laws.

4.2 NUMBER OF MEMBERS

There is no limit on the number of Members the Corporation may admit. The number of Directing Members shall be limited to twenty one (21).

4.3 FEES AND DUES

The annual dues payable to the Corporation by each class of Members shall be established and may be changed from time to time by resolution of the Board. Dues shall be due and payable upon confirmation of admission to Membership by the Corporation.

The Corporation shall operate on a not-for-profit basis. However, annual dues and other special fees may be levied by the Board of Directors to offset expenses. These dues and fees shall be used to support the activities of the Corporation, including administrative costs (including expenses related to managerial expenses, meetings, travel costs, legal fees, web site development and maintenance), promotional expenses and any other purposes that are approved by the Board.

4.4 ADMISSION TO MEMBERSHIP

Applicants may apply to be admitted as a Member by submitting a completed and signed Membership Agreement together with payment of the first annual dues fee and any other documents as may be required by the Corporation from time to time. The Board, or a designated party, may approve or reject such application in accordance with the criteria established from time to time by the Board. Members shall be admitted upon confirmation by the Corporation that its application for admission has been accepted. The Corporation may publicly disclose the Admission of the Member at its sole discretion.

4.5 MEMBERSHIP BOOK

The Corporation shall keep a membership book containing the name and address of each Member, the date upon which the applicant became a Member, and the name of one individual from each Member organization who shall serve as a primary contact for the Corporation and vote on all issues on which such Member is entitled to vote, receive all correspondence and information, and distribute this information within his/her organization. Termination of the membership of any Member shall be recorded in the book, together with the date of termination of such membership.

4.6 NON LIABILITY OF MEMBERS

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

4.7 TRANSFERABILITY OF MEMBERSHIPS

If two Members merge then the new entity may assume the membership rights of the most senior Member, provided that the new entity re-executes the appropriate Membership or Associate Membership Agreement. If one Member acquires more than 50% of the controlling interests of another Member then the acquiring Member may assume the membership rights of the most senior Member, provided that it executes the appropriate Membership Agreement if necessary. In all other cases, no Member may transfer a membership or any right arising therefrom without the prior written consent of the Board of Directors. All rights of membership cease upon a Member's dissolution.

4.8 RELATED COMPANIES

No Member shall hold more than one membership in the Corporation. It shall not be permitted for any subsidiary of a Member to hold a membership of the Corporation where the Member has ownership or control of more than 50% of the controlling interests of that subsidiary. In case of any dispute the Board shall determine the suitability of related company memberships in a manner that is consistent with the Corporation's Articles and these By-laws and the best interests of the Corporation.

4.9 INVOLUNTARY TERMINATION OF MEMBERSHIP

(a) The Board may terminate any Member on the good faith determination that such Member has to a material or serious degree violated these By-laws, the Articles of Incorporation, the terms of the Membership Agreement executed by such Member, any duly adopted resolutions of the Board of Directors or the rules of conduct of the Corporation as established by the Board of Directors, or has engaged in conduct materially and seriously prejudicial to the purposes and interests of the Corporation. If no fewer than one-third (1/3) of the Directors submit a written request to the Secretary calling for the termination of a Member, then within forty-five (45) days of receiving the appropriate number of requests, the Secretary will call a meeting of the Board. At the meeting, the Member that is being considered for termination must be given the opportunity to make a statement. If the Member does not attend the meeting after receiving proper notice, which shall be no less than 15 days, then no such opportunity needs to be given.

4.10 WITHDRAWAL OF MEMBERSHIP

A Member may withdraw from the Corporation at any time by providing written notice to the Secretary which shall be effective upon receipt of notice by the Secretary or upon such later date as specified in such notice or upon such other date specified in the Membership Agreement executed by the withdrawing Member, as the case may be.

4.11 EFFECT OF TERMINATION, SUSPENSION OR WITHDRAWAL

A Member who is terminated by the Board or who withdraws from the Corporation shall have no further interest or participation in any of the activities of the Corporation. A terminated Member shall not be allowed to be permitted to reapply for membership in the Corporation unless the terminated Member shall receive the consent of the Board. Termination, suspension or withdrawal of membership shall not effect the termination or survival of any rights as granted under the Membership Agreements. No termination or withdrawal shall relieve a Member from full payment of any and all dues and other fees or assessments remaining unpaid on the date of termination or withdrawal. Upon termination or withdrawal, a Member shall not be entitled to a refund of any amounts paid during membership.

4.12 ANNUAL MEMBER MEETING

The Corporation shall hold an annual Member meeting. The Board may hold additional Member meetings at its discretion.

4.13 WAIVER OF FEES FOR INVITED EXPERTS

The Board may agree to waive the membership dues for an invited expert when the Corporation would benefit from their participation and the payment of dues is a genuine barrier to membership. An invited expert must execute the standard Membership Agreement with an amendment that states that: they may participate in any working group that invites them; they do not receive a vote in Working Group meetings; that they may represent themselves as a Member; and that the terms of the waiver are confidential within the Corporation. Any waiver must be reviewed and renewed annually by the Board.

5. BOARD OF DIRECTORS

5.1 NUMBER OF BOARD MEMBERS

The Board of Directors (the "Board") shall consist of a number of Members that shall in any case shall be no less than 9 (nine) and no more than 30 (thirty). The Board shall annually determine the size of the Board for the next 12 months by: a) allocating two Board seats for elected Professional Members; b) offering each Directing Member a Board seat that wishes to appoint a Director; c) creating a number of seats for elected Organizational Members equal to the number of Directing Members taking seats divided by 3 and rounding up the result; d) Creating additional seats for elected Organizational Members, if necessary, to make a minimum of nine (9) seats in total and a minimum of three Organizational Members.

The Consortium will hold an annual Board election as described in these bylaws to select Directors from the Professional and Organizational membership. All elected Directors shall serve for a one year term.

If a new Directing Member is approved by the Board then they will be immediately granted a seat on the Board.

5.2 APPOINTMENT OF DIRECTORS FROM DIRECTING MEMBERS

Each Directing Member shall be entitled to designate one Director to the Board. This representative must be a full time employee of the Member entity or serve as an agent or consultant to the Member. If the designated representative is removed by the Directing Member or resigns or dies while in office, the Directing Member shall be entitled to appoint a new successor Director to the Board. A Directing Member may change its designated representative, or relinquish its Board seat prior to the next election cycle, at any time by sending a written notice to the Secretary or by having a written notice sent or delivered to the Board prior to the meeting by its new designated representative.

5.3 NOMINATION OF AND ELECTION OF BOARD MEMBERS

Each Organizational Member shall be entitled to designate one candidate to stand for election to Board. This candidate must be a full time employee of the Member entity or serve as an agent or consultant to the Member. A Directing Member may not stand for election.

Any Professional Member may stand for election to the Board.

The Secretary shall announce the election date to the membership with at least sixty (60) days notice. An Organizational Member candidacy shall be official upon written nomination signed by two (2) of the Organizational Members submitted to the Secretary at least thirty (30) days prior to the date of the election. A Professional Member candidacy shall be official upon written nomination signed by two (2) Professional Members submitted to the Secretary at least thirty (30) days prior to the date of the election.

At such time as all candidate are known, but in no event later than twenty-one (21) days prior to the date of the election, the Secretary shall provide each Member with a written ballot containing the names of all candidates, the number of seats that are available and a list of Directors designated by Directing Members.

a) Each Organizational Member casts a number of votes for the Organizational Member Candidates, by email ballot, equal to the number of open Organizational Member Board seats. The candidates shall be ranked by number of votes received. The highest ranking candidate shall be granted Board seats until all seats for Organizational Members are filled.

b) Each Professional Member casts two votes for the Professional Member Candidates, by email ballot. The two candidates receiving the highest number of votes shall be elected.

In the case of a tied vote the Members with the longest standing Corporate Membership shall be elected.

5.4 DIRECTOR VACANCIES AND RESIGNATIONS

Directors may be removed from office, with or without cause, as permitted by and in accordance with the laws of the state of California.

A vacancy, or vacancies, on the Board shall exist: (1) on the death, resignation or removal of any Professional or Organizational Member Director, (2) when an Organizational Member Director's employer terminates its membership in the Corporation, (3) when a Professional Member Director terminates his or her membership in the Corporation, (4) when an Organizational Member Director resigns from his employer, (5) when a Directing Member chooses to relinquish their Board seat, (6) when the number of Directing Members appointing Directors plus the number of Organizational Members standing for election is insufficient to fill the minimum number of Board Seats.

In the event that the vacancy exists in one of the Board seats elected by the Professional Membership, such Board seat shall be filled with a Professional Member selected by the Board.

If a Directing Member withdraws, then a vacancy shall not be created unless there is fewer than the minimum required total number of Directors, as set out in these Bylaws.

In the event that a vacancy exists due to the death, resignation or removal of an Organizational Member Director, the Organizational Member employing the vacating Director may propose a qualified employee to the Board of Directors to replace the vacating Director. If the Organizational Member nominated replacement is not approved by the Board, a vacancy is created.

For all vacancies, other than Professional Member vacancies, the Board shall fill the vacancy by consideration of any qualified Organizational Members willing to put forward a candidate.

A person selected to fill a vacancy by the Board shall hold office until the next election of the Board of Directors or until his or her death, resignation or removal from office.

5.5 POWERS

Subject to the provisions of the California Nonprofit Corporation Law and any limitations in the Articles of Incorporation and these By-laws relating to action required or permitted to be taken or approved by the Members, the activities and affairs of the Corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the Board of Directors.

5.6 DUTIES

It shall be the duty of the Directors to:

- (a) Perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these By-laws;
- (b) Appoint and remove, employ and discharge, and, except as otherwise provided in these By-laws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- (c) Supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- (d) Meet at such times and places as required by these By-laws;
- (e) Register their addresses with the Secretary of the Corporation, and notices of meetings mailed or telegraphed to them at such addresses shall be valid notices thereof;
- (f) Elect annually officers for the Corporation, including a President from the Corporation's Members or from the general public who shall be the Chief Executive Officer of the Corporation and shall perform all duties as required by these By-laws;
- (g) Establish and disband other committees and working groups as appropriate to conduct the work of the Corporation;
- (h) Establish policies relating to confidentiality, ownership rights, license grants, warranties, public relations, and other criteria which shall apply to all Members of the Corporation;
- (i) Approve the Corporation's annual budget;
- (j) Establish annual dues for all Member classes, and establish privileges and benefits for all such classes;
- (k) Communicate actions related to the duties specified in this Section to the Members within 60 days.

5.7 COMPENSATION

Directors shall serve without compensation.

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

5.8 PLACE OF BOARD MEETINGS

Meetings of the Board shall be held at any place within or outside California or in any manner that has been designated by resolution of the Board or in the notice of the meeting or, if not so designated, at the principal office of the Corporation.

In order to encourage maximum participation, meetings may be held in person or by any combination of audio, document or video conferencing techniques, as long as all Directors participating in such meetings can hear one another.

5.9 ANNUAL AND REGULAR MEETINGS

The Directors shall meet once a year to elect the officers for the Corporation and to agree on the Corporation's budget for the next fiscal year, and also on such other occasions as scheduled by the Board.

5.10 SPECIAL MEETINGS

Special meetings of the Board may be called by the President, the Vice President, the Secretary or any two Directors.

5.11 NOTICE OF MEETINGS

Unless otherwise provided by the Articles of Incorporation, these By-laws, or provisions of law, the following provisions shall govern the giving of notice for meetings of the Board of Directors:

(a) Regular Meetings. At least 21 days prior notice shall be given by the Secretary of the Corporation to each Director unless a 2/3 majority of the Directors agree to waive the notice requirement.

(b) Special Meetings. At least one week prior notice shall be given by the Secretary of the Corporation to each Director of each special meeting of the Board.

Such notices must be by mail or by electronic message, and shall state the place, date and time of the meeting and the matters proposed to be acted upon at the meeting. Any required notice may be waived by individual Directors.

5.12 QUORUM FOR BOARD MEETINGS

A quorum shall consist of at least 50% of the members of the Board.

In the absence of a quorum at any meeting of the Board of Directors, a majority of the Directors present may adjourn the meeting. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of enough Directors to leave less than a quorum, if any action taken is approved by at least a majority of the required quorum for such meeting.

5.13 2/3 MAJORITY ACTION AS BOARD ACTION

Every act or decision done or made by at least 2/3 of the non-abstaining Directors present at a meeting duly held at which a quorum is present is the act of the Board, unless the Articles of Incorporation, these By-laws, or provisions of law require a different percentage or different voting rules for approval of a matter by the Board.

5.14 RATIFICATION OF ENCUMBERED SPECIFICATIONS

The ratification of a specification that shall require a royalty payment to a Member or third party shall require the vote of at least 3/4 of the non-abstaining Directors present at a meeting duly held at which a quorum is present followed by approval by at least 2/3 of non-abstaining Organizational Members with a quorum requirement of at least 50% of the Organizational Members. The Secretary must provide 14 days notice to the Organizational Membership for a vote to approve the specification. Votes from the Organizational Members may be collected over a 21 day period at any combination of meetings, mail or electronic mail.

5.15 CONDUCT OF MEETINGS

Meetings of the Board shall be chaired by the President of the Corporation or, in his or her absence, by the Vice President of the Corporation or, in the absence of each of these persons, by a Chairperson chosen by a majority of the Directors present at the meeting. The Secretary of the Corporation shall act as Secretary of all meetings of the Board, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting.

To the extent permitted by applicable law, a Director may designate an alternate representative from the same organization to attend a Board of Directors meeting as an observer when that Director is unable to attend a meeting. A Director must be in attendance at any meeting to vote.

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

5.16 BOARD ACTION WITHOUT A MEETING

Any action that the Board is required or permitted to take may be taken without a meeting if at least 50% of the Board consent in writing or by electronic message to that action being taken without a meeting and there is at least 2/3 of the non-abstaining Directors in favor of the action. Such action by written consent shall have the same force and effect as any other validly approved action of the Board. All consents shall be filed with the minutes of the proceedings of the Board.

To conduct such an email vote, the Directing Member requesting the vote must send a proposal to the Secretary and request that the Secretary conduct the vote by email. Within a reasonable period of time after receiving such a request, the Secretary will send an email to the Board requesting their vote on the proposal. Each Director has seven (7) days in which to vote. To cast a vote, a Director must send a reply email to the Secretary stating his or her vote on the proposal. After the seven-day period has expired the Secretary will tally the votes and email the results to the Board.

5.17 SUSPENSION OF VOTING RIGHTS

A Director Member's right to vote is suspended if that Directing Member fails to attend four of the last five meetings of the Board or fails to vote in the last three consecutive board actions without meetings. Any Directing Member with suspended voting rights shall not be counted in determination of Board quorum and Board votes.

The Secretary will provide written notice to a Directing Member whose voting rights have been suspended. The notice will include the reason for the suspension of the voting rights. Upon receipt of such notice, the Directing Member will not be entitled to vote on any matter. A Director Member, whose voting rights have been suspended, may have its voting rights reinstated by the Board.

5.18 NON-LIABILITY OF DIRECTORS

The Directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.

5.19 INDEMNIFICATION OF DIRECTORS AND OFFICERS

To the fullest extent permitted by law, the Corporation shall indemnify its Directors, officers, employees, and other persons described in Corporations Code section 7237(a), including persons formerly occupying any such positions, against all expenses, judgments, fines, settlements, and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that section, and including an action by or in the right of the Corporation, by reason of the fact that the person is or was a person described in that section. "Expenses," as used in these By-laws, shall have the same meaning as in that section of the Corporations Code.

On written request to the Board by any person seeking indemnification under Corporations Code section 7237(b) or 7237(c), the Board shall promptly decide under Corporations Code section 7237(e) whether the applicable standard of conduct set forth in Corporations Code section 7237(b) or section 7237(c) has been met and, if so, the Board shall authorize indemnification. If the Board cannot authorize indemnification, because the number of Directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of Directors who are not parties to that proceeding, the Board shall promptly call a meeting of Directing Members. At that meeting, the Directing Members shall determine under Corporations Code section 7237(e) whether the applicable standard of conduct has been met and, if so, the Directing Members present at the meeting in person or by proxy shall authorize indemnification.

To the fullest extent permitted by law and except as otherwise determined by the Board in a specific instance, expenses incurred by a person seeking indemnification under this Section of these By-laws in defending any proceeding covered by this Section shall be advanced by the Corporation before final disposition of the proceeding, on receipt by the Corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately found that the person is entitled to be indemnified by the Corporation for those expenses.

5.20 INSURANCE FOR CORPORATE AGENTS

Except as may be otherwise provided under provisions of law, the Corporation may purchase and maintain insurance to the full extent permitted by law on behalf of its officers, Directors, employees, and other agents, to cover any liability asserted against or incurred by any officer, Director, employee, or agent in such capacity or arising from the officer's, Director's, employee's, or agent's status as such.

6. OFFICERS

6.1 DESIGNATION OF OFFICERS

The officers of the Corporation shall be a President, a Secretary, and a Treasurer (who shall serve as the Chief Financial Officer). The Corporation may also have one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers, and other such officers with such titles as may be determined from time to time by the Board of Directors.

6.2 ELECTION AND TERM OF OFFICE

Officers shall be elected by the Board of Directors, at a meeting of the Board, no more than 12 months following the previous election and each officer shall hold office until he or she resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.

It shall not be required for officers to maintain any membership in the Corporation. It shall be possible for an individual to hold more than one Officer's position.

6.3 REMOVAL AND RESIGNATION

Any officer may be removed, either with or without cause, by the Board, at any time. Any officer may resign at any time by giving written notice to the Board or to the President or Secretary of the Corporation. Any such resignation shall take effect at the date of receipt of such notice or at any later date specified therein, and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. The above provisions of this Section shall be superseded by any conflicting terms of a contract which has been approved or ratified by the Board relating to the employment of any officer of the Corporation.

6.4 VACANCIES

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

6.5 DUTIES OF PRESIDENT

The President shall be the chief executive officer of the Corporation and shall, subject to the control of the Board, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these By-laws, or which may be prescribed from time to time by the Board, including presiding as chairperson at all meetings of the Board and at all meetings of the Members.

6.6 DUTIES OF SECRETARY

The Secretary shall: certify and keep at the principal office of the Corporation the original, or a copy, of the Articles of Incorporation and these By-laws as amended or otherwise altered to date; shall keep at the principal office of the Corporation, or at such other place as the Board may determine, a book of minutes of all meetings of the Directors, and, if applicable, meetings of committees of Directors and of Directing Members, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots; shall see that all notices are duly given in accordance with the provisions of these By-laws or as required by law and advise the Members in writing of all results of any election of Officers; be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these By-laws, to duly executed documents of the Corporation; shall keep at the principal office of the Corporation a membership book containing the name and address of each and any Members, and, in the case where any membership has been terminated, he or she shall record such fact in the membership book together with the date on which such membership ceased; shall exhibit at all reasonable time to any Director, or to his or her agent or attorney, on request therefore, the By-laws, the membership book, and the minutes of the proceedings of the Directors of the Corporation; in general, perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these By-laws, or which may be assigned to him or her from time to time by the Board.

6.7 DUTIES OF TREASURER

The Treasurer (who shall serve as the Chief Financial Officer of the Corporation) shall: keep and maintain, or cause to be kept and maintained, adequate and correct books and accounts of the Corporation's properties and transactions; shall send or cause to be given to the Directing Members and Directors such financial statements and reports as are required to be given by law, by these By-laws, or by the Board; shall ensure the books of account shall be open to inspection by any Director at all reasonable times; shall (i) deposit, or cause to be deposited, all money and other valuables in the name and to the credit of the Corporation with such depositories as the board may designate; (ii) disburse the Corporation's funds as the Board may order; (iii) render to the President and the Board, when requested, an account of all transactions as Chief Financial Officer and of the financial condition of the Corporation; and (iv) have such other powers and perform such other duties as the Board or the By-laws may require, including restoration to the Corporation of all of its books, papers, vouchers, money, and other property of every kind in the possession or under the control of the Chief Financial Officer on his or her death, resignation, retirement, or removal from office.

6.8 COMPENSATION

The officers shall serve without compensation, unless compensation is authorized by the Board.

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

7. COMMITTEES; WORKING GROUPS

7.1 EXECUTIVE COMMITTEE

The Board may designate an Executive Committee consisting of three (3) or more Directors and may delegate to such committee the powers and authority of the Board in the management of the business and affairs of the Corporation, to the extent permitted, and except as may otherwise be provided, by provisions of law.

The Board may at any time revoke or modify any or all the Executive Committee authority so delegated, increase or decrease but not below three (3) the number of the members of the Executive Committee, and fill vacancies on the Executive Committee from the Directors. The Executive Committee shall keep regular minutes of its proceedings, cause them to be filed with the corporate records, and report the same to the Board from time to time as the Board may require.

7.2 OTHER COMMITTEES

The Corporation shall have such other committees as may from time to time be designated by resolution of the Board. These committees may consist of persons who are not also members of the Board and shall act in an advisory capacity to the Board.

7.3 MEETINGS AND ACTION OF COMMITTEES

Meetings and actions of the Executive Committee and other committees shall be governed by, noticed, held and taken in accordance with the provisions of these By-laws concerning meetings of the Board of Directors, with such changes in the context of such Bylaw provisions as are necessary to substitute the Executive Committee or other committees and its members for the Board. The Board of Directors or such other committees may also adopt rules and regulations pertaining to the conduct of meetings of the committees to the extent that such rules and regulations are not inconsistent with the provisions of these By-laws.

7.4 WORKING GROUPS

The Board may form working groups to focus on particular issues related to the aims of the Corporation. Participation in working groups is open to all Members and each working group shall operate as defined by the Corporation's Membership Agreement, the current working group guidelines that are approved by the Board, or under a charter that is agreed by the working group membership and approved by the Board.

8. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

8.1 EXECUTION OF INSTRUMENTS

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

8.2 CHECKS AND NOTES

Except as otherwise specifically determined by resolution of the Board, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation shall be signed by the Secretary and a second officer of the Corporation. In cases where the amount is equal to or less than a pre-determined threshold determined by the Board the signature of the Secretary alone will be sufficient.

8.3 DEPOSITS

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

8.4 GIFTS

The Board may accept on behalf, and for the benefit, of the Corporation any contribution, gift, bequest, or devise for the non-profit purposes of this Corporation.

9. CORPORATE RECORDS, REPORTS, SEAL, INSPECTION RIGHTS AND FISCAL YEAR

9.1 MAINTENANCE OF CORPORATE RECORDS

The Corporation shall keep at its principal office:

- (a) Minutes of all meetings of Directors, committees of the Board and of all meetings of Directing Members, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof;
- (b) Adequate and correct books and records of account, including accounts of its properties and business transactions and accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (c) A record of its Members, if any, indicating their names and addresses and, if applicable, the class of membership held by each Member and the termination date of any membership;
- (d) A copy of the Corporation's Articles of Incorporation and By-laws as amended to date, which shall be open to inspection by the Members of the Corporation at all reasonable times during office hours.

9.2 CORPORATE SEAL

The Board may adopt, use, and at will alter, a corporate seal. Such seal shall be kept at the principal office of the Corporation. Failure to affix the seal to corporate instruments, however, shall not affect the validity of any such instrument.

9.3 DIRECTORS' INSPECTION RIGHTS

Every Director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation as may be allowed under the Articles of Incorporation and under the provisions of law.

9.4 RIGHT TO COPY AND MAKE EXTRACTS

Any inspection under the provisions of this Article may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts as may be allowed under the Articles of Incorporation and under the provisions of law.

9.5 PERIODIC REPORT

The Board shall cause any annual or periodic report required under law to be prepared and delivered to an office of this state or to the Members of this Corporation, to be so prepared and delivered within the time limits set by law.

The Board shall cause an annual report to be prepared within 120 days after the end of the corporation's fiscal year. That report shall contain the following information in appropriate detail:

(a) A balance sheet as of the end of the fiscal year, an income statement, and statement of changes in financial position for the fiscal year, accompanied by an independent accountants' report or, if none, by the certificate of an authorized officer of the corporation that they were prepared without audit from the corporation's books and records;

(b) A statement of the place where the names and addresses of current members are located.

The Secretary shall annually notify each Member of the Member's right to receive a copy of the financial report under this Section. The Secretary shall promptly cause the most recent annual report to be sent to any requesting Member.

9.6 FISCAL YEAR

The fiscal year of the Corporation shall be the calendar year.

10. IRC 501(C)(6) TAX EXEMPTION PROVISIONS

10.1 LIMITATION ON ACTIVITIES

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

10.2 PROHIBITION AGAINST PRIVATE INUREMENT

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

10.3 DISTRIBUTION OF ASSETS

Upon the dissolution of the Corporation, its assets remaining after payment, or provision for payment of all debts and liabilities of the Corporation shall be distributed for one or more exempt purposes within the meaning of Section 501 (c) (3) of the Internal Revenue Code or shall be distributed to the federal government, or to a state or local government, for a public purpose. Such distribution shall be made in accordance with all applicable provisions of the laws of this state.

11. AMENDMENT OF BY-LAWS

These By-laws may be altered, amended, or repealed and new By-laws adopted by approval by at least 2/3 of non-abstaining Organizational Members with a quorum requirement of at least 50% of the Organizational Members. The Secretary must provide 21 days notice to the Organizational Membership for a vote to amend the By-laws. Votes from the Organizational Members may be collected over a 45 day period at any combination of meetings, mail or electronic mail.

12. CONSTRUCTION AND TERMS

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

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

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

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

13. INDEPENDENT ACTION

Each Member shall remain free to design, develop, market, modify or distribute any of its products or services without restriction, within the scope of whatever rights and licenses it may have. Participation in the Corporation shall not be deemed to constitute a partnership, joint venture, or other joint activity. No Member authorizes any other Member to make any commitments or representations on its behalf. Participation in the Corporation shall not grant to any other Member the right to use the name or trademarks of the Member in any publicity or advertising without the Member's prior written consent.