

BYLAWS OF THE IMS GLOBAL LEARNING CONSORTIUM, INC.

ARTICLE I - NAME AND PRINCIPAL OFFICE

Section 1. Name. The name of the corporation shall be IMS GLOBAL LEARNING CONSORTIUM, INC., referred to herein as "IMS". The corporation may adopt such trade names as the Board of Directors shall from time to time determine. All uses of the name of the corporation and all trade names must be approved by the Board of Directors.

Section 2. Known Place of Business. The known place of business of the corporation (hereinafter the "principal office") shall be initially located in Burlington, Massachusetts. The Board of Directors is hereby granted full power and authority to change the principal office from one location to another both within and without said state.

Section 3. Other Offices. The corporation may have offices and places of business in such other places within and without the State of Delaware as the Board of Directors may from time to time determine.

Section 4. Nonprofit Status

4.1 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.

4.2 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)(3) or 501(c)(6) (as appropriate) 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 1. Membership.

Contributing Members. Contributing membership in the corporation is open to organizations including, but not limited to institutions of higher education, non-profit organizations, agencies of federal, state and national governments, companies and other organizations that, as determined by the Board of Directors, contribute to the accomplishment of the purposes of the corporation. Such organizations may be located anywhere in the world, except as prohibited by any restrictions imposed by the US Government.

1.2 Additional Classes of Members. The Board of Directors may create additional classes of members by resolution.

1.3 Qualifications for Membership. Organizations with an interest in the development, evolution and/or use of advanced distributed learning environments, where "distributed learning" is defined as learning that takes place without the requirement that the learners and the instructors should be present in the same place or participate at the same time, and which uses in some manner, information and/or telecommunications technologies, are eligible for membership.

1.4 Admission to Membership. The Board of Directors by resolution or otherwise may establish criteria for admission to membership in addition to those stated in Section 1.3., above. The corporation shall admit new members to the corporation upon application and successful review of qualifications. Membership shall be continuing, provided that the member maintains itself in good standing with respect to the: (a) payment of dues and assessments as specified in Article II, Section 3 of the Bylaws; and (b) Bylaws and policies and procedures established by the Board of Directors. In the event that a member is alleged to be in noncompliance and thus, subject to the loss of its membership, the member shall be provided with notice of the allegations of noncompliance and an opportunity to respond to the allegation prior to any vote by the Board of Directors regarding the alleged noncompliance.

1.5 Contributing Member Representative. The person from time to time identified in writing (including by email or facsimile) for such purpose by a member organization shall be the official voting representative of the member organization. The Contributing Member Representative shall have the power to assign his or her duties as the official representative to other representatives of the Contributing Member organization either permanently or temporarily.

Section 2. Voting Rights. Contributing Members shall have the limited right to vote only for the election of Directors. Each Contributing Member shall vote through its Representative, who shall be entitled to cast one vote on behalf of the Contributing Member. The election of Directors may be conducted in writing (including by mail, electronic mail, facsimile or via a Web platform that records a permanent record). Any Contributing Member shall have the right to voluntarily waive their voting rights and their associated ability to participate as elected Directors of the organization. Such waivers may be exercised or rescinded on an annual basis, at the time that dues are payable.

Section 3. Dues and Assessments. Each member shall be responsible for payment of dues and assessments, as the same shall be fixed from time to time by the Board of Directors. A member which fails to pay its dues or assessments within sixty days from the time such levy becomes payable shall have its membership rights suspended and may become subject to forfeiture of membership as provided by policies established by the Board of Directors.

Section 4. Member Meetings.

4.1 Annual Meeting. An annual meeting of the members shall be held for the transaction of any business as may properly come before the members at such time and place as may be designated by the Board of Directors. At the option of the Board, an Annual meeting of

Members may be held by written consent pursuant to Section 4.6.

4.2 Special Meetings. Special meetings of the members or any class of members may be called by the Board of Directors. Special meetings may also be called by Contributing Members having one-tenth of the total number of the votes entitled to be cast at such meeting.

4.3 Place and Time of Meetings. Meetings of the members may be held at such place and time as the Board of Directors directs.

4.4 Notice of Annual and Special Meetings. Written or printed notice stating the place, day and hour of the meeting, and, in the case of special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten or more than fifty days before the date of the meeting, either personally, by mail, by facsimile transmission, or by electronic communication, by or at the direction of the Chair or the Secretary, or the officers or persons calling the meeting, to each member entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, postage prepaid, addressed to the member at his address as it appears on the records of the corporation. If sent by facsimile or electronic communication, such notice shall be deemed to be delivered when sent.

4.5 Waivers of Notice. Whenever any notice is required to be given to any member under any provision of law, the Certificate of Incorporation or these Bylaws, a waiver thereof in writing signed by the member entitled to such notice, whether before or after the time stated therein, shall be the equivalent of giving such notice. The presence of any member at a meeting, in person or by other electronic means of attendance, without objection to the lack of notice of such meeting, shall also waive notice by such member.

4.6 Action Without Meeting

Any action required or permitted to be taken at any Annual or Special meeting 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 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 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.

4.7 Actions Taken by Electronic Communication.

An electronic transmission consenting to an action to be taken and transmitted by a Member 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 corporation can determine (A) that the electronic transmission was transmitted by the Member or by a person or persons authorized to act for the Member and (B) the date on which such Member 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 corporation by delivery to its registered office in Delaware, its principal place of business or an Officer or agent of the corporation having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to the corporation'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 corporation or to an Officer or agent of the corporation 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 corporation. 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 5. Quorum. A quorum for the transaction of business at any meeting of the Members shall be at least one-fifth of the votes entitled to be cast represented in person.

Section 6. Proxies. There shall be no proxy voting by the Members.

Section 7. Participation. The Board of Directors by resolution or otherwise may determine to allow members to participate in a meeting of the members by means of conference telephone or by any means of communication or combination thereof, including electronic communications, by which all persons participating in the meeting are able to communicate simultaneously with one another, and such participation shall constitute presence in person at the meeting.

ARTICLE III - BOARD OF DIRECTORS

Section 1. Power of the Board. The business and affairs of the corporation shall be managed by its Board of Directors, which shall be, and shall possess all of the powers of, the "Governing Body" of the corporation as a not-for-profit membership corporation under Delaware General Corporation Law.

Section 2. Number, Election and Term of Directors.

2.1 Number. The number of Directors, including elected, appointed and ex-officio Directors of the corporation, shall be no less than seven (7) and no more than eighteen (18). No two (2) Directors serving during the same or overlapping terms shall be employed by or otherwise representative of the same member. The number of Directors to be elected at any election shall be determined by resolution of the Board of Directors.

2.2 Election. At least a majority of the Board of Directors shall be elected by the

Contributing Members from a slate of candidates-nominated in the manner provided in Article V, Section 3 below. The nominees shall be representative of non-profit and commercial interests in global higher education, K-12, and training marketplaces Board member nominee qualifications shall include the ability to demonstrate active commitment of their organization to IMS standards in the marketplace, providing industry leadership, and fully representing the broader set of IMS member organizations. When compiling a slate of nominees, the nominating committee of the Board of Directors shall strive to achieve an elected Board that includes the following types of organizations:

- Colleges, universities or other Higher Education degree-granting institutions, systems, or consortia
- K-12 organizations
- Non-US headquartered organizations
- Government agencies (US or other)
- Other not-for-profit organizations
- Suppliers of a diverse range of learning and educational technology, content, and enterprise systems
- Training organizations

Board of Director elections shall be held at the Annual Meeting, or electronically, as provided in section 4.6 above.

The Chief Executive Officer of the corporation shall serve as a voting member of the Board of Directors.

EDUCAUSE shall have the right to appoint one Director, in perpetuity. The Director shall serve for such a period as determined by EDUCAUSE, and may be replaced at any time at the discretion of EDUCAUSE, subject to the approval of the Board of Directors.

The remaining Directors shall be appointed by the current Board of Directors.

2.3 Term. The terms of the Directors, except for the EDUCAUSE appointee and the Chief Executive Officer Director, shall be staggered terms of three years each, which may be renewed three times for a total of four (4) full, consecutive, three-year terms. An individual shall be eligible to serve an additional four (4) full, consecutive three-year terms on the Board after a break in service of at least one (1) year. Without regard to this section, the Chief Executive Officer shall serve on the Board for so long as he or she is the Chief Executive Officer of the corporation.

Any Director who ceases to be employed by the organization for which he or she worked at the time of his or her appointment, or whose responsibilities change significantly must resign from the Board. The Board of Directors may, however, at its discretion reappoint such persons to fill a vacancy.

2.4 Nomination and Election Procedures. The Board of Directors shall establish reasonable nomination and election procedures given the nature, size, and operations of the Corporation, 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. Vacancies. Vacancies (including unfilled positions) on the Board of Directors and any Directorship to be filled at any time by reason of an increase in the number of Directors (which increase may be made at anytime), may be filled by majority vote of the remaining members of the Board of Directors, though less than a quorum of the Board. Nothing herein requires a vacancy to be filled at any time, unless such vacancy leaves the Board with less than seven (7) Directors. A Director appointed to fill a vacancy shall be appointed to serve the unexpired term of the Director's predecessor in office, if any, and until his/her successor is elected or appointed and qualified. In the event of a vacancy and appointment pursuant to this Section, the number of appointed Directors serving on the Board must be less than the number of elected Directors.

Should one or more vacancies be created which would cause the appointed Directors serving on the Board to be equal to or exceed the number of elected Directors, a special election shall be held as expeditiously as possible to fill that vacancy. The special election will be held by mail, including electronic mail and facsimile transmission. The Director elected to fill the vacancy shall be elected to serve the unexpired term of the Director's predecessor in office and until his/her successor is elected or appointed and qualified.

Section 4. Resignation and Removal of Directors.

4.1 Removal. A Director may be removed at any time and for any reason or no reason by majority vote of the Directors.

4.2 Resignation. Any Director may resign upon written notice to the Chair, Secretary, or Board of Directors. Such resignation shall be effective as of the date of receipt of the written notice or at whatever future date is specified in the notice.

Section 5. Quorum of Directors and Action by the Board. A majority of the number of Directors in office shall constitute a quorum for the transaction of business. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

Section 6. Meetings of the Board. Meetings of the Board of Directors, regular or special, may be held at such place within or without the State of Delaware, and upon such notice as described below. Directors shall meet at least annually. For a special meeting, notice shall be given to each Director either (a) two business days in advance of the meeting, if given personally or by facsimile or by electronic communication, or (b) three business days in advance of the meeting, if given by written notice deposited in the mail, in each case by the Secretary or by the officer or one of the Directors calling the meeting. Regular meetings of the Board of Directors may be held without notice as shall from time to time be determined by the Board; 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 7. Notice and Waiver. Whenever written notice is required to be given to any Director, it may be given to such Director either personally or by sending a copy thereof through the mail, by facsimile, or by electronic communication, charges prepaid, to the address supplied by the Director to the corporation for the purpose of notice. Whenever notice is required, a waiver thereof in writing signed by the Director or Directors entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice. Further, the presence of any Director at a meeting, in person or by other electronic means of attendance, without objection to the lack of notice of such meeting, shall also waive notice by such Director.

Section 8. Action Without a Meeting. Any action which may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action taken, shall be signed by all of the Directors entitled to vote with respect to the matter.

Section 9. Participation. The Directors may participate in a meeting of the Board of Directors or a committee of the Board by means of conference telephone or by any means of communications including electronic communications by which all persons participating in the meeting are able to communicate simultaneously with one another, and such participation shall constitute presence in person at the meeting.

Section 10. Proxies. There shall be no proxy voting by the Directors.

Section 11. Compensation of Directors. The Chief Executive Officer of the corporation may receive compensation in reasonable amounts for services rendered as an employee of the corporation as may be determined by vote of a majority of the Board. No Director shall receive any compensation for services rendered to the corporation as a Director, except that Directors may be reimbursed for expenses incurred in the performance of their duties to the corporation as authorized by resolution of the Board.

ARTICLE IV - CHIEF EXECUTIVE OFFICER

The Board of Directors, by majority vote of the Directors in office, may engage and discharge the Chief Executive Officer.

The Chief Executive Officer shall be the chief executive officer of the corporation with powers and duties including, but not limited, to those set forth in this Article IV. The Chief Executive Officer is accountable for the development and execution of the various plans, programs and budgets adopted by the Board. The Chief Executive Officer must submit a budget annually to the Board for approval, unless otherwise provided by resolution of the Board of Directors. The Chief Executive Officer may enter into and shall execute all contracts relating to or in furtherance of the business and other affairs of the corporation. The Chief Executive Officer has the authority and responsibility for recruiting, engaging and discharging all employees of the corporation

including, but not limited to all executive and professional staff on an at-will basis only. Personnel matters are further subject to the budget of the corporation, the number of persons and job descriptions of the personnel as approved by the Board of Directors.

The Chief Executive Officer shall be the official point of contact and official channel of communication between the Board and all corporation staff members, and, in addition, shall be the official point of contact and channel of communication between the corporation and any and all outside persons, agencies, organizations or associations. He/she shall publish whatever reports, commentaries, resolutions, position papers, or other materials the Board may from time to time dictate and shall assume such other duties or offices as the Board may from time to time delegate.

ARTICLE V – COMMITTEES

Section 1. Authority. The Board may appoint such special or standing committees as it deems advisable. Unless such committee consists of only Board Members, all standing and special committees are advisory only and may not act on behalf of the Board. No standing or special committee may adopt rules for its own governance inconsistent with these Bylaws or with rules adopted by the corporation or the Board. The Board may establish any number of such standing or special committees and may appoint persons who are not Directors or officers to serve on such committees.

Section 2. Executive Committee. By resolution the Board may designate an Executive Committee consisting of the Chair of the Board of Directors, the Chief Executive Officer of the corporation and at least two (2) but no more than four (4) additional Directors as the Board may determine. The Executive Committee may exercise the powers of the Board when the Board is not in session, reporting to the Board at its succeeding meeting any action taken. Meetings of the Executive Committee may be called by one or more Executive Committee members.

Section 3. Nominating Committee.

3.1 Number and Qualifications. By resolution, the Board of Directors shall designate a Nominating Committee consisting of five (5) individuals, three (3) of whom shall be Directors and two (2) of whom shall be Contributing Member representatives who are not Directors. Only Directors whose terms are not expiring shall be appointed to the Nominating Committee.

3.2 Nominees. Nominees for election to the Board of Directors shall be Contributing Member representatives at the time of nomination and election. The annual resolution designating the Nominating Committee shall set forth any additional criteria chosen by the Board to establish that the nominees to serve as Directors are best able to carry out the purposes of the corporation and serve the needs of the members.

ARTICLE VI - TECHNICAL ADVISORY BOARD

Section 1. Purpose. The Board of Directors shall establish by resolution a Technical Advisory Board, referred to herein as "TAB"; to advise the Board of Directors on matters requiring technical knowledge, experience, or expertise.

Section 2. Membership. The TAB shall be composed of one designee of each Contributing Member organization, and such designees shall be named by the official representative of each Contributing Member organization. Additionally IMS staff members selected by the Chief Executive Officer shall serve as-ex-officio, non-voting members of the TAB. The TAB shall select its own Chairpersons, to serve a term designated by the Chief Executive Officer, commencing on the date of the first meeting of the TAB in any calendar year. Leaders of the workgroup activities in IMS and other representatives of Contributing Members chosen by the Chief Executive Officer may participate in a steering group to advise the TAB on technical processes and procedures.

Section 3. Voting. Each Contributing Member organization shall be eligible to cast one vote on workgroup activities provided the organization has been in attendance at 50% or more of the preceding 4 workgroup meetings. Each Contributing Member organization shall also be eligible to cast one vote as a TAB member on a workgroup charter or completed document. On each upcoming TAB vote, the Contributing Member organizations will be notified and asked if they wish to participate in the vote. Organizations shall have the right to vote provided that they have indicated that their organization wishes to vote and that they have participated in two-thirds or more of the preceding [3] TAB votes in which they have indicated that they wish to participate. When an organization fails to vote in more than one-third of such TAB votes, voting rights for that organization shall be suspended due to non-responsiveness until the beginning of the next calendar year.

TAB voting shall occur during a voting period specified by the Chief Executive Officer at the time that a resolution is presented. The designated voter for each Contributing Member may cast a vote of "Yes" or "No" in person or by electronic means. "No" votes must be accompanied by a constructive explanation of what must be changed in order to achieve a "Yes" vote, otherwise they will not be counted as a valid vote. A resolution shall only be deemed approved if 1) the number of valid "Yes" votes is at least two-thirds (2/3) of the total number of valid "Yes" and "No" votes cast; and 2) the total number of valid votes cast is at least the lesser of ten (10) or one-third (1/3) of the number of Contributing Member organizations.

Section 4. Recommendations. Once a resolution is accepted, it will be presented to the Chief Executive Officer for approval and implementation. The Chief Executive officer shall present a report of all TAB decisions to the Board of Directors periodically, and the Board of Directors shall have the right to make the final determination of whether or not to follow the advice of the TAB.

ARTICLE VII - OFFICERS OF THE BOARD

Section 1. Officers. The Board of Directors shall annually elect or appoint a Chair, a Secretary, a Treasurer and it may, if it so determines, elect or appoint such other Board officers and assistant

officers as it may deem proper. The Chair and Secretary shall be elected or appointed from among the current Directors. The Treasurer may or may not be a Director of the corporation. Unless otherwise provided by the Directors, the Chief Financial Officer of the corporation, or in the absence of a Chief Financial Officer, the Chief Executive Officer or his/her designee, shall be elected as the Treasurer. The Board of Directors may by resolution authorize the Secretary to appoint Assistant Secretary(ies) as needed. Any two or more offices may be held by the same person except the offices of Chair and Secretary.

Section 2. Term of Office and Removal. The term of office for each officer shall be for one year and until his or her respective successors are elected or appointed or until such officer's earlier resignation or removal. Any officer may be removed at any time by the vote of the Board. A vacancy in an office shall be filled by the Board at a duly constituted meeting.

Section 3. Duties of Officers. The officers of the Board shall have such duties in connection with the operation of the corporation as generally pertain to their respective offices, as described below, as well as such powers and duties as from time to time may be delegated to them by the Board of Directors. The Chief Executive Officer and the individuals he or she hires to perform the day-to-day operations of the corporation, which individuals may be given proper executive titles, including corporate officer titles, shall not be governed by the provisions contained in this Article.

3.1 Chair. The Chair of the Board shall preside at all meetings of the Board of Directors and its Executive Committee unless the Chair of the Board designates another officer or Director to preside and, subject to the supervision of the Board of Directors, shall perform all duties customary to the office of the Chair.

3.2 Secretary. The Secretary, or an Assistant Secretary, shall: (i) keep the minutes of the meetings of the corporation in appropriate books; (ii) give and serve all notices of the corporation; (iii) be the custodian of the records; and (iv) perform all other duties as may be directed from time to time by the Board of Directors. In the absence of the Secretary and/or an Assistant Secretary at any meeting, a secretary pro tempore shall be appointed by the presiding officer.

3.3 Treasurer. The Treasurer shall have the care and custody of and be responsible for all the funds and other property of the corporation, and shall deposit all such funds in the name of the corporation in such bank or banks, trust company or trust companies or safe deposit vaults as the Board may designate.

Subject to other provisions of these Bylaws or Policies of the Board, the Treasurer shall make and endorse in the name of the corporation all checks, drafts, warrants and orders for the payment of money, and pay out and dispose of same and receipt therefore, under the direction of the Chair or the Board of Directors.

The Treasurer shall keep at the office of the corporation correct books of account of all its business and transactions and such other books of account as the Board may require. The Treasurer shall exhibit at all reasonable times following 30 days written notice the books of accounts to any Director or immediately to the Chair of the Board upon application at the office of the corporation

during business hours. The Treasurer shall render a statement of the condition of the finances of the corporation at each regular meeting of the Board and at such other times as the Board shall require. The Treasurer shall provide a full financial report to the Board annually.

The Treasurer shall do and perform all other duties pertaining to the office of Treasurer.

ARTICLE VIII - INDEMNIFICATION

Section 1. Actions other than by or in the Right of the Corporation

The corporation 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 corporation) by reason of the fact that he or she is or was a Director, ex officio member of the Board, officer, employee or agent of the corporation, or is or was serving at the request of the corporation 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 corporation, 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 corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 2. Actions by or in the Right of the Corporation

The corporation 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 corporation to procure a judgment in its favor by reason of the fact that he or she is or was a director, ex officio member of the Board, officer, employee or agent of the corporation, or is or was serving at the request of the corporation 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 corporation and except 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 3. Success on the Merits

To the extent that any person described in Section 1 or 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 4. Specific Authorization

Any indemnification under Section 1 or 2 of this Article VIII (unless ordered by a court) shall be made by the corporation 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 corporation.

Section 5. Advance Payment

Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the corporation 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 corporation as authorized in this Article VIII.

Section 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 Contributing 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 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 corporation's obligation to advance expenses (including attorney's fees).

Section 8. Insurance

The Board of Directors may authorize, by a vote of the majority of the full Board, the corporation to purchase and maintain insurance on behalf of any person who is or was a Director, ex officio member of the Board, officer, employee or agent of the corporation, or is or was serving at the request of the corporation as a Director, ex officio member of the Board, 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 corporation would have the power to indemnify him or her against such liability under the provisions of this Article VIII.

Section 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, ex officio member of the Board, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 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 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

ANTITRUST COMPLIANCE

Section 1. General

The corporation 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 President shall consult legal counsel and seek legal review whenever necessary to insure that the activities of the corporation are conducted in conformance with such laws.

Section 2. Availability of Work Product

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

Section 3. No Obligation to Endorse

No member shall, by reason of its membership or participation in the corporation or otherwise, be obligated to license from the corporation, use or endorse any work product of the corporation developed or endorsed by the corporation, or to conform any of its products to any standards or specifications developed or adopted by the corporation, nor shall any such member be precluded from independently licensing, using or endorsing similar work product, software, specifications or documentation developed by it or by others.

ARTICLE X - MISCELLANEOUS

Section 1. Fiscal Year. The fiscal year of the corporation may be the calendar year or such other period as may be fixed by the Board of Directors.-

Section 2. Order of Business. The parliamentary rules in "Robert's Rules of Order,"²² as may be revised, shall govern all deliberations when not in conflict with these Bylaws. The Board of Directors may waive the application of these rules as it deems necessary.

Section 3. Amendments. These Bylaws may be altered, amended, or repealed at any meeting of the Board by a resolution adopted by a majority vote of the Directors in office.

Section 4. Compensation of Agents and Employees. The corporation may pay compensation in reasonable amounts to agents and employees for services rendered, such amounts to be fixed by the Board or, if the Board delegates this power to any officer or officers, then by such officer or officers. In the discretion of the Board of Directors, the corporation may secure a bond for the performance of officers, agents or employees of the corporation.

Section 5. Dissolution. 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 Internal Revenue 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 requirements of Section 501(c)(3) or 501(c)(6) (as appropriate) of the Internal Revenue Code and any related regulations.