

**BYLAWS
OF
CONTINUA HEALTH ALLIANCE,
an Oregon nonprofit corporation**

TABLE OF CONTENTS

	Page
SECTION 1. DEFINITIONS.....	1
SECTION 2. OFFICES.....	2
SECTION 3. PURPOSES AND POWERS.....	3
SECTION 4. DIRECTORS	4
SECTION 5. MEETINGS AND ACTION OF BOARD	9
SECTION 6. LIABILITY AND INDEMNIFICATION	12
SECTION 7. OFFICERS.....	13
SECTION 8. WORK GROUPS.....	17
SECTION 9. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS	18
SECTION 10. CORPORATE RECORDS AND REPORTS	19
SECTION 11. CODE SECTION 501(c)(6) TAX EXEMPTION PROVISIONS.....	20
SECTION 12. AMENDMENT OF BYLAWS.....	21
SECTION 13. CONSTRUCTION AND TERMS.....	21
SECTION 14. MEMBERSHIP PROVISIONS	21
SECTION 15. MEETINGS OF THE PARTICIPANTS	24
SECTION 16. PARTICIPATION CLASSIFICATIONS.....	27
SECTION 17. CONFIDENTIALITY.....	35
SECTION 18. INTELLECTUAL PROPERTY RIGHTS	36
SECTION 19. DISPUTES AND DISPUTE RESOLUTION.....	43

**BYLAWS
OF
CONTINUA HEALTH ALLIANCE
(an Oregon Nonprofit Corporation)**

SECTION 1. DEFINITIONS

“**Affiliate**” or “**Affiliates**” shall mean an entity that directly or indirectly controls another entity via beneficial ownership of more than fifty percent (50%) of the voting power or equity in another entity (“Control”), or is Controlled by another entity, or is under common Control with another entity, so long as such Control exists.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended from time to time.

“**Contributor**” shall mean all Participants of the Corporation who so qualify in accordance with the provisions of Section 14 and Section 16.3.

“**Corporation**” shall mean the Continua Health Alliance.

“**Design Guideline**” and “**Draft Design Guideline**” and “**Necessary Claims**” and “**Contribution**” shall have the respective meanings given them in Section 18.1 of these Bylaws.

“**Executive Director**” shall mean an officer of the Corporation whose duties and responsibilities are set forth in Section 7.10 below. The Executive Director shall be an individual who is not a member of the board of directors.

“**Governmental Entity Participant**” shall mean all those “Special Participants” (as defined below) who so qualify in accordance with the provisions of Section 14 and Section 16.4.

“**Supporting Participant**” (formerly known as **Liaison Participation**) shall mean all those “Special Participants” (as defined below) who so qualify in accordance with the provisions of Section 14 and Section 16.5.

“**Originating Promoters**” shall mean entities whose Originating Promoters Participation Agreements were executed and received prior to, or contemporaneous with the organizational meeting of the Corporation, and who have continuously thereafter maintained their Originating Promoters Participation Agreements in good standing. An Originating Promoter’s rights under this participation level shall forever terminate upon their failure to renew or otherwise maintain their participation in the Corporation at the Originating Promoter participation level.

“**Participant**” shall mean a general reference to all Originating Promoters, Promoters and Contributors who have so qualified for such classifications pursuant to the provision of these Bylaws. Participant shall not mean a "member" as that term is defined under ORS

65.001(28), since the Corporation shall not be deemed to have members as defined under the Oregon Nonprofit Corporation Act.

“Participation Agreement” shall mean the applicable Originating Promoter Participation Agreement, Promoter Participation Agreement, Contributor Participation Agreement, Governmental Entity Participation Agreement, Supporting Participation Agreement, Provider Group Participation Agreement, and/or Research and Education Entity Participation Agreement approved by the board of directors of the Corporation and applicable to the Participant in context of each use of that term herein.

“Promoter” shall mean all Participants of the Corporation who so qualify in accordance with the provisions of Section 14 and Section 16.1.

“Provider Group Participant” shall mean all those “Special Participants” (as defined below) who so qualify in accordance with the provisions of Section 14 and Section 16.6.

“Research and Education Entity Participant” shall mean all those “Special Participants” (as defined below) who so qualify in accordance with the provisions of Section 14 and Section 16.7.

“Special Participant” shall mean Governmental Entity Participants, Supporting Participants, Provider Group Participants and Research and Education Entity Participants who so qualify for such classification pursuant to the provisions of these bylaws. Except as otherwise provided for in charter for such participant classes set forth in Sections 16.4 through 16.7, all Special Participants shall have the general rights and obligations of all other Participants.

SECTION 2. OFFICES

- 2.1 **Principal Office.** The principal office of the Corporation shall be located at 3855 153rd Street, Beaverton, Oregon 97006. The designation of the Corporation’s principal office may be changed from time to time by the board of directors, which change of address shall be effective upon written notice to all Participants.
- 2.2 **Other Offices.** The Corporation may also have offices at such other places, within or without of the State of Oregon, 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.
- 2.3 **Registered Agent and Office.** The Corporation must continuously maintain in the State of Oregon both:
 - (a) a registered agent, who must be:
 - (1) an individual who resides in the State of Oregon;

- (2) a corporation, a domestic business corporation, domestic limited liability company or domestic professional corporation with an office in the State of Oregon; or
 - (3) a foreign corporation, foreign business corporation, foreign limited liability company or foreign professional corporation authorized to transact business in the State of Oregon with an office in the State of Oregon; and
- (b) a registered office of the Corporation which must be the residence or office address of the registered agent.

SECTION 3. PURPOSES AND POWERS

- 3.1 **Code 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 Code, including, for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(6) of the Code.
- 3.2 **Specific Objectives and Purposes.** The purpose of the Corporation shall be to establish an eco-system of interoperable personal telehealth systems and services through rapid, broad and open industry adoption of existing and new standards and specifications for the interchange of personal health and wellness information between patients, vendors, doctors, and other organizations involved in the healthcare industry. In furtherance of these efforts, the corporation and its Participants shall seek to solicit the participation and comments of all interested parties on a fair, equitable and open basis. As part of these efforts, the Corporation may interface with other groups or bodies developing standards and specifications related to the telehealth platform. The corporation will be responsible for driving improvements or changes into existing standards bodies where needed for interoperability of personal telehealth devices. The corporation acknowledges that global standards are needed to define interoperability requirements among personal telehealth devices so that consumers can combine devices and services and create a full interoperable personal telehealth system. The corporation further acknowledges that standards have the potential to enable innovation and grow the ecosystem in order to make personal telehealth systems a reality.
- 3.3 **General Powers.** The Corporation has perpetual duration, but may be dissolved at any time upon a unanimous vote of all members of the board of directors. The Corporation has succession in its corporate name and has the same powers as an individual to do all things necessary or convenient to carry out its affairs.
- 3.4 **Compliance with Antitrust Laws.**
- (a) Each of the Participants of the Corporation is committed to fostering competition in the development of new products and services, and the Design Guidelines proposed to be developed are intended to promote such

competition. Each Participant further acknowledges that it may compete with the others in various lines of business and that it is therefore imperative that they and their representatives act in a manner which does not violate any applicable state, federal or international antitrust laws or regulations.

- (b) Accordingly, each Participant hereby assumes responsibility to provide appropriate legal counsel to its representatives acting under these Bylaws regarding the importance of limiting the scope of their discussions to the topics that relate to the purposes of the Corporation, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise. Each Participant further acknowledges that they and all other Participants are free to develop competing technologies and standards and to license its intellectual property rights including, but not limited to, patent rights to third parties, including without limitation, to enable competing technologies and standards.
- (c) Each Participant further agrees to comply with the antitrust guidelines or such other guidelines as the board of directors may adopt from time to time to assure compliance with applicable antitrust laws and regulations.

SECTION 4. DIRECTORS

4.1 **Powers.** Subject to the provisions of the Oregon Nonprofit Corporation Act and any limitations in the Articles of Incorporation and these Bylaws, all corporate powers will be exercised by or under the authority of, and the affairs of the Corporation will be managed under the direction of, the board of directors.

4.2 **Duties.** It shall be the duty of the board of directors to:

- (a) perform any and all duties imposed on them collectively or individually by law, by the Articles of Incorporation, or by these Bylaws;
- (b) appoint and remove, employ and discharge, and, except as otherwise provided in these Bylaws, prescribe the duties and fix the compensation, if any, of all officers, agents and employees of the Corporation;
- (c) supervise all officers, agents and employees of the Corporation to assure that their duties are performed properly;
- (d) meet at such times and places as required by these Bylaws;
- (e) register their addresses with the Executive Director of the Corporation, which addresses shall be used for notices of meetings given in accordance with Section 5.3;

- (f) elect annually a Chairperson to preside over the board of directors' meetings or to take such action as may be agreed upon by the board of directors;
- (g) establish, charter, modify, and disband Work Groups (as defined in Section 8.1), as appropriate to conduct the work of the Corporation;
- (h) adopt such procedures to govern operations of the Work Groups (or if necessary, for specific Work Groups) ("**Work Group Procedures**" or "**Specific Work Group Procedures**" as defined in Section 8.2);
- (i) establish policies and procedures for the consideration of changes or refinements to Design Guidelines of the Corporation;
- (j) consider Draft Design Guidelines and Design Guidelines for adoption and submission to Promoters for final approval or rejection;
- (k) consider for approval or rejection any public statement, press release or similar public materials concerning the Design Guidelines or the business of the Corporation prior to making such materials public;
- (l) consider for approval or rejection the Corporation's annual budget. If the annual budget is not approved at the start of each calendar year, the Corporation shall operate based on the prior yearly budget, to the extent practical, until an annual budget is approved;
- (m) make a yearly evaluation of the Corporation's fulfillment of its purposes as set forth in the Bylaws and the need to continue the existence of this entity going forward;
- (n) establish or revise participation classes, the rights and privileges of the various classes of Participants and the annual dues required to be paid by each class of Participants;
- (o) adopt and modify the Bylaws; and
- (p) such other duties as are customary for the Directors of a nonprofit corporation organized under Section 501(c)(6) of the Code.

4.3 **Qualification.** All directors must be employees of an Originating Promoter or, commencing at the second (2nd) annual meeting of the board of directors, a Promoter.

4.4 **Number.** The Corporation shall have not less than five (5) Directors. Each Originating Promoter shall have a perpetual right to appoint a representative to the board of directors ("**Permanent Seats**"). Commencing with the second (2nd) Annual Meeting of the boards of directors, the number of directors shall increase to not more than fifteen (15) individuals, with the difference between the

maximum number of seats and the total number of Permanent Seats being filled by individual representatives elected from among the Promoters pursuant to the election procedures in Section 4.5, (“**Elected Seats**”).

- 4.5 **Election and Appointment.** Each Originating Promoter may appoint one (1) director to serve on the board of directors of the Corporation. An Originating Promoter, by providing written notice to the board of directors, may replace a director appointed by that Originating Promoter at any time either with its designated alternate representative or another designated representative of the Originating Promoter. At the organizational meeting of the Corporation each director initially appointed by each Originating Promoter shall submit its executed Participation Agreement and tender all fees due and payable. Commencing with the second (2nd) annual meeting of the board of directors, the Elected Seats, if any, may be filled by election from among individual representatives of the Promoters. Promoters, wishing to have a representative nominated for an Elected Seat must provide written notice of the same to the board of directors sixty (60) days prior to the scheduled date for the upcoming Annual Meeting of the board of directors. Such notice shall include certification that the Promoter or its representative has actively participated in the activities of the Corporation during the prior six (6) month period and that if their representative is elected, the Promoter will pay the Corporation an amount equal to the unprorated difference between Originating Promoter dues and Promoter dues immediately upon notice of their representative’s election to the board of directors. The notice shall also include evidence of and that the Promoter possesses and will contribute sufficient technical and marketing resources to invest in the Corporation’s activities. No Promoter may have more than one (1) employee or representative elected to the board of directors at any given time. For purposes of these Bylaws, a Promoter and its Affiliates shall be deemed as one (1) Promoter. Voting for the Elected Seats shall be exclusively by written ballot completed and received by the Secretary of the Corporation not less than twenty-four (24) hours prior to the time of the Annual Meeting of the board of directors. Each Promoter and Originating Promoter may cast one (1) vote per candidate, and may vote for as many candidates as the number of open Elected Seats. The candidates receiving the highest number of votes shall be elected, up to the number of Elected Seats. In the event of a tie between two (2) or more individuals seeking election to the board of directors, the existing members of the board of directors who are not otherwise tied for re-election to the board of directors shall, via majority vote, break any and all ties in the election of the new board of directors. Each Originating Promoter and Promoter may also appoint an alternate representative of its director to serve on the board of directors on a temporary basis should its appointed director become unavailable. Even if an appointed director is present, such director’s alternate representative may also attend meetings of the board of directors, but in a nonvoting capacity.

4.6 **Terms of Directors.**

- (a) The term of each director representing an Originating Promoter will be two (2) years, or until that director's replacement is appointed. The term of each director in an Elected Seat will be one (1) year or until that director's replacement is elected. The term of an alternate representative replacing a director expires at the next appointment of directors. Directors may be elected for successive terms, subject to the vote of no-confidence set forth in Section 4.6(b).
- (b) **Vote of No-Confidence on Originating Promoter's Representatives to Board of Directors.**
 - (1) A vote of no-confidence will be held:
 - (A) At the conclusion of each director's two (2) year term of representation on the board of directors; or
 - (B) if fifty percent (50%) or more of the members of the board of directors request a vote of no-confidence concerning any director who has not shown any meaningful contribution to the Corporation. Said directors must deliver to the Executive Director one or more written demands for a vote of no-confidence.
 - (2) A vote of no-confidence shall be taken as soon as possible after the expiration of a director's terms or after written demand is made. If more than fifty percent (50%) of all then-current members of the Board of Directors (interested as well as disinterested) cast votes of no-confidence regarding a director, such director shall immediately withdraw its representative from the board of directors. For purposes of any vote of no-confidence procedure, an abstention from vote or failure to vote shall count as a vote of confidence.

4.7 **Resignation of Directors.** A director may resign at any time by delivering written notice to the board of directors, the Executive Director, or to the President or secretary. A resignation is effective when the written notice is received unless the notice specifies a later effective date. No director may resign if the Corporation would be left without a duly appointed director in charge of its affairs, except upon notice to the Office of the Attorney General or other appropriate agency of the State of Oregon.

4.8 **Vacancy.**

- (a) Vacancies on the board of directors shall exist: (1) whenever an individual serving as an Originating Promoter's or Promoter's representative to the board of directors resigns from the board of directors; (2) whenever a director resigns from or is terminated from employment by the Originating

- (b) The Originating Promoter or Promoter employing the resigning or removed director may replace such director with another employee or representative by providing the Executive Director with written notice of the same within thirty (30) days after notice from the board of directors that such vacancy must be filled. Except as otherwise herein provided, a director shall be conclusively deemed to resign if the director's employment with the Originating Promoter or Promoter is terminated for any reason. A person appointed to fill a vacancy on the board of directors shall hold office until the end of the term of the individual being replaced or until his or her death, resignation or removal from office.
- (c) If the Originating Promoter or Promoter who has the right under this Section 4.8 to appoint a replacement director fails to appoint such director within the time prescribed in Section 4.8(b), or if the vacancy has occurred because the Originating Promoter or Promoter employing the director has terminated its participation as a Promoter in the Corporation, the vacancy shall not be filled until the next regularly scheduled election of directors.
- (d) In the event that two (2) or more Originating Promoters or Promoters are merged or an Originating Promoter or Promoter is acquired by another Originating Promoter or Promoter, the resulting or acquiring Originating Promoter or Promoter shall designate which of the directors is to remain on the board and the other director will be removed from the board immediately upon the closing of the acquisition or merger. The vacancy created by the merger or acquisition shall not be filled until the next regularly scheduled election of directors.

4.9 **Compensation.** Directors shall serve without compensation by the Corporation. Nothing herein contained shall be construed to preclude any director from serving the Corporation in any other capacity as an officer, agent, employee, or otherwise, and receiving compensation therefore so long as such compensation is approved by a majority of Disinterested Directors. As used herein, the term “**Disinterested Directors**” shall mean directors not seeking compensation for such services, or whose Participant organization is not seeking compensation for such services.

4.10 **Chairperson of the Board of Directors.** The directors shall elect a director as chairperson to preside at all meetings of the board of directors and to perform other duties prescribed by the board of directors. The chairperson will be appointed from among the directors at the annual meeting of the board of directors by an affirmative vote of a majority of directors and will serve until his

or her successor is elected. If the chairperson is absent from a meeting of the board of directors, the directors may appoint another director to act as chairperson for such meeting by an affirmative vote of the majority of directors. The board of directors may remove the chairperson, with or without cause, by unanimous vote of the entire board of directors. Said removal may not act as a removal from the board of directors without further action as provided for under these Bylaws. In the event that the chairperson resigns or is removed for any reason, the board of directors shall appoint a new chairperson.

SECTION 5. MEETINGS AND ACTION OF BOARD

5.1 Annual, Regular and Special Meetings.

- (a) If the time and place of a director's meeting is fixed by these Bylaws or is regularly scheduled by the board of directors, the meeting is an annual or regularly scheduled periodic meeting. All other meetings are special meetings.
- (b) The annual meetings of the board of directors shall be held as soon as practical following the annual meeting of the Participants. Each of the annual meetings of directors shall be deemed a regular meeting. Other regularly scheduled periodic meetings of the directors shall be held on dates and at times to be determined by a majority of the board of directors.
- (c) The board of directors may permit any or all directors to participate in meetings by, or conduct the meeting through, use of any means of communication by which either all directors participating may simultaneously hear or read each other's communications during the meeting or all communications during the meeting are immediately transmitted to each participating director, and each participating director is able to immediately send messages to all other participating directors.
- (d) If a meeting is conducted through the use of any means described in Section 5.1(b), all participating directors must be informed that a meeting is taking place at which official business may be transacted and a director participating in the meeting by this means is deemed to be present in person at the meeting.

5.2 Action Without Meeting.

- (a) As used in this Section 5.2:
 - (1) "Electronic" has the meaning given that term in ORS 84.004.
 - (2) "Electronic signature" has the meaning given that term in ORS 84.004.
 - (3) "Sign" includes an electronic signature.

- (4) “Written” includes a communication that is transmitted or received by electronic means.
- (b) Action required or permitted by the Oregon Nonprofit Corporation Act to be taken at the board of directors’ meeting may be taken without a meeting if the action is taken by all members of the board of directors. The action must be evidenced by one or more written consents describing the action taken, signed by each director, and included in the minutes or filed with the corporate records reflecting the action taken.
- (c) Action taken under this Section 5.2 is effective when the last director signs the consent, unless the consent specifies an earlier or later effective date.

5.3 **Call and Notice of Meetings.**

- (a) Unless the Oregon Nonprofit Corporation Act provides otherwise, regularly scheduled periodic meetings of the board must be preceded with thirty (30) days’ notice to each director of the upcoming schedule for such meetings, with such notice including the date or schedule of dates and times for such meetings as well as the manner in which the meeting will be conducted. No other notice shall be required for regularly scheduled periodic meetings until such time as said schedule is amended.
- (b) Annual meetings of the board must be preceded by at least ninety (90) days’ notice to each director of the date, time and place of the meeting. Unless the Oregon Nonprofit Corporation Act provides otherwise, the notice need not describe the purpose of the Annual Meeting.
- (c) Special meetings of the board must be preceded by at least seven (7) days’ notice to each director of the date, time and place of the meeting and describe the purpose of the Special Meeting.
- (d) The Chairperson of the board of directors, the Executive Director or twenty percent (20%) of the directors currently in office may call and give notice of a Special Meeting of the board.
- (e) The primary means for the provision of notice shall be via electronic mail to the director at the electronic mail address as it appears on the records of the Corporation, provided that the director to be contacted shall acknowledge personal receipt of the electronic message by a return electronic message or telephone call within three (3) business days of the first notification. If notification is provided by mail (including the U.S. Postal Service, express courier services and the like), such notice shall be deemed to be delivered when deposited in the mail addressed to the director at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by telephone, facsimile, or other electronic means; provided,

however, such notification shall be subject to any and all acknowledgment requirements as may be set forth in the Oregon Nonprofit Corporation Act.

5.4 **Waiver of Notice.**

- (a) A director may at any time waive any notice required by the Oregon Nonprofit Corporation Act, the Articles of Incorporation or these Bylaws. Except as provided in Section 5.4(b), the waiver must be in writing, must be signed by the director entitled to the notice, must specify the meeting for which notice is waived and must be filed with the minutes or the corporate records.
- (b) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director, at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

5.5 **Quorum.** A quorum of the board of directors shall consist of two-thirds (2/3rds) of the total current number of directors. In the absence of a continued quorum at any meeting of the board of directors already in progress, a majority of the directors present may adjourn the meeting.

5.6 **Voting.**

- (a) If a quorum is present when a vote is taken, and unless the Articles of Incorporation or these Bylaws specify otherwise, the affirmative vote of two-thirds (2/3rds) of directors present when the act is taken is the act of the board of directors, provided, however, that no action may be taken without an affirmative vote of more than one half (1/2) of the total current number of directors. A director is considered present regardless of whether the director votes or abstains from voting.
- (b) A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless:
 - (1) the director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding the meeting or transacting the business at the meeting;
 - (2) the director's dissent or abstention from the action taken is entered in the minutes of the meeting; or
 - (3) the director delivers written notice of dissent or abstention to the presiding officer of the meeting before its adjournment or to the Corporation immediately after adjournment of the meeting. The

right of dissent or abstention is not available to a director who votes in favor of the action taken.

- (c) An Originating Promoter's and Promoter's alternate representative of its director may vote in place of that Promoter's director if the director is unavailable to attend a board of director's meeting. If both the director and the alternate are unable to attend a board of director's meeting, the director may designate an alternate representative who is an employee of the directors Participant company to attend the board of director's meeting and vote in place of the director pursuant to a proxy signed by such director.

- 5.7 **Conduct of Meetings.** Meetings shall be governed by such procedures as may be approved from time to time by the board of directors, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with the Oregon Nonprofit Corporations Act. Where practical, Robert's Rules of Order shall be used as a guide in the conduct of meetings.

SECTION 6. LIABILITY AND INDEMNIFICATION

- 6.1 **Liability.** To the extent permissible under Oregon and Federal law, directors shall not be personally liable for the debts, liabilities, or other obligations of the Corporation.
- 6.2 **Indemnification.** The Corporation shall indemnify an individual who is made, or threatened to be made, a party to an action, suit or proceeding, whether civil, criminal, administrative, investigative or otherwise (including an action, suit or proceeding by or in the right of the Corporation) because the individual is or was a director or officer of the Corporation against liability incurred in the action, suit or proceeding to the fullest extent permitted by the Oregon Nonprofit Corporation Act, as it exists on the date hereof or is hereafter amended.
- 6.3 **Advance for Expenses.** The Corporation shall pay for or reimburse the reasonable expenses incurred by a director or officer who is a party to an action, suit or proceeding in advance of final disposition of the action, suit or proceeding to the fullest extent permitted by the Oregon Nonprofit Corporation Act, as it exists on the date hereof or is hereafter amended.
- 6.4 **Not Exclusive.** This Section 6 shall not be deemed exclusive of any other provisions or insurance for the indemnification of directors, officers, employees, or agents that may be included in any statute, bylaw, agreement, resolution of directors or otherwise, both as to action in any official capacity and action in any other capacity while holding office or while an employee or agent of the Corporation.
- 6.5 **Insurance.** Except as may be otherwise provided under provisions of law, the board of directors, in its sole discretion, may adopt a resolution authorizing the purchase and maintenance of insurance on behalf of any particular agent of the

Corporation (including a director, officer, employee or other agent of the Corporation) against liabilities asserted against or incurred by the agent in such capacity or arising out of the agent's status as such, whether or not the Corporation would have the power to indemnify the agent against such liability under the Articles of Incorporation, these Bylaws or the Oregon Nonprofit Corporation Act.

SECTION 7. OFFICERS

- 7.1 **Required Officers.** The officers of the Corporation shall be a President, a Vice President, a Secretary, a Treasurer and an Executive Director. The Corporation may also have such other officers with such titles as may be determined from time to time by the board of directors. With the exception of the Executive Director, all officers shall be an employee or representative of a Promoter with a current representative on the Board of Directors.
- 7.2 **Duties and Authority of Officers.** Each officer has the authority and will perform the duties set forth in these Bylaws or, to the extent consistent with these Bylaws, the duties and authority prescribed by the board of directors or by direction of an officer authorized by the board of directors to prescribe the duties of other officers.
- 7.3 **Election and Term of Office.** Officers shall be elected by a majority vote of the board of directors, no later than 30 days after each annual meeting of the board of directors. Each officer shall hold office until he or she dies, resigns or is removed or is otherwise disqualified to serve, or until his or her successor shall be elected and qualified, whichever occurs first.
- 7.4 **Removal and Resignation.**
- (a) The board of directors may remove any officer from his or her elected office, either with or without cause, at any time upon unanimous vote of the members of the board of directors, minus one (1). An officer who is also an employee of a Promoter shall automatically be removed if the employer of the officer terminates its participation in the Corporation.
 - (b) Any officer may resign at any time by delivering written notice to the Corporation. A resignation is effective when received unless the notice specifies a later effective date and the acceptance of such resignation shall not be necessary to make it effective. If a resignation is made effective at a later date, the board of directors may fill the pending vacancy before the effective date if the board provides that the successor does not take office until the effective date. This Section 7.4 shall be superseded by any conflicting terms of a contract that has been approved or ratified by the board of directors relating to the employment of any officer of the Corporation.

- 7.5 **Vacancies.** Any vacancy caused by the death, resignation, removal, disqualification, or otherwise, of any officer shall be filled by the board of directors. In the event of a vacancy in any office other than that of President, such vacancy may be filled temporarily by appointment by the President until such time as the board of directors shall fill the vacancy.
- 7.6 **President.** The President shall be the chief executive officer and, if a director, may also be the chairperson of the board of directors of the Corporation. The President, acting in the capacity of the President, shall, subject to the control of the board of directors, supervise and control the affairs of the Corporation and the activities of the officers. He or she shall perform all duties incident to his or her office and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be prescribed from time to time by the board of directors, including presiding as chairperson at all meetings of the Participants. Except as otherwise expressly provided by law, by the Articles of Incorporation, or by these Bylaws, the President shall, in the name of the Corporation, execute such deeds, mortgages, bonds, contracts, checks, or other instruments which may from time to time be authorized by the board of directors.
- 7.7 **Vice President.** In the absence of the President, or in the event of his or her inability or refusal to act, the Vice President shall perform all the duties of the President, and when so acting shall have all the powers of, and be subject to all the restrictions on, the President. The Vice President shall have other powers and perform such other duties as may be prescribed by law, by the Articles of Incorporation, or by these Bylaws, or as may be prescribed by the board of directors.
- 7.8 **Secretary.** The Secretary shall:
- (a) certify and keep at the principal office of the Corporation the original, or a copy, of these Bylaws as amended or otherwise altered to date;
 - (b) keep at the principal office of the Corporation or at such other place as the board of directors may determine, a book of minutes of all meetings of the board, and, if applicable, meetings of committees of directors and of Participants, recording therein the time and place of holding, whether regular or special, how called, how notice thereof was given, the names of those present or represented at the meeting, and the proceedings thereof, including all ballots and proxies;
 - (c) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by law;
 - (d) advise the Participants in writing of all results of any election of directors;
 - (e) be custodian of the records and of the seal of the Corporation and affix the seal, as authorized by law or the provisions of these Bylaws, to duly executed documents of the Corporation;

- (f) keep at the principal office of the Corporation a participation book containing the name and address of each and any Participants, and, in the case where any participation has been terminated, he or she shall record such fact in the participation book together with the date on which such participation ceased;
- (g) exhibit at all reasonable times to any Participant of the Corporation, or to the Participant's agent or attorney, on request therefore, the Bylaws, the participation book, and the minutes of the proceedings of the Participants of the Corporation; and
- (h) perform all duties incident to the office of Secretary and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the board of directors.

7.9 **Treasurer.** The Treasurer shall:

- (a) have charge and custody of, and be responsible for, all funds and securities of the Corporation, and deposit all such funds in the name of the Corporation in such banks, trust companies, or other depositories as shall be selected by the board of directors;
- (b) receive, and give receipt for, monies due and payable to the Corporation from any source whatsoever;
- (c) disburse, or cause to be disbursed, the funds of the Corporation as may be directed by the board of directors, taking proper vouchers for such disbursements;
- (d) keep and maintain adequate and correct accounts of the Corporation's properties and business transactions, including accounts of its assets, liabilities, receipts, disbursements, gains and losses;
- (e) exhibit at all reasonable times the books of account and financial records to any director of the Corporation, or to his or her agent or attorney, on request therefore;
- (f) render to the president and directors, whenever requested, an account of any or all of his or her transactions as Treasurer and of the financial condition of the Corporation;
- (g) prepare, or cause to be prepared, and certify, or cause to be certified, the financial statements to be included in any required reports; and
- (h) perform all duties incident to the office of Treasurer and such other duties as may be required by law, by the Articles of Incorporation of the

Corporation, or by these Bylaws, or which may be assigned to him or her from time to time by the board of directors.

7.10 Executive Director.

- (a) The Executive Director of the Corporation shall perform such undertakings as are necessary to manage the day-to-day needs of the Corporation, including:
 - (1) scheduling and setting up meetings;
 - (2) facilitating communication between Participants, including providing timely notices of meetings;
 - (3) acting as the liaison to other consortia or associations with which the Corporation may choose to associate as instructed by the board of directors;
 - (4) providing Participants with timely minutes, summaries and other reports with respect to the activities of the Corporation as may be prepared by the Secretary or the Executive Director;
 - (5) receiving and processing Participation Agreements, and executing them on behalf of the Corporation; and
 - (6) performing all duties incident to the office of Executive Director and such other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or which may be assigned to him or her from time to time by the board of directors.
- (b) The Executive Director may engage third parties to undertake the activities described in Section 7.10(a), provided that the Executive Director enters into appropriate contracts protective of the Corporation, and ensures compliance with terms and conditions of this Agreement including confidentiality obligations.

7.11 Compensation. With the exception of the Executive Director, whose services shall be provided pursuant to a consulting and services agreement between the Corporation and an outside contractor (or alternatively, an employment agreement), the officers shall serve without compensation by the Corporation, unless the board of directors authorizes compensation. Nothing in this Section 7.11 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 as defined in Section 4.9.

SECTION 8. WORK GROUPS

- 8.1 **Overview.** The Corporation shall have such committees as may from time to time be designated upon vote of the board of directors (“**Work Groups**”).
- 8.2 **Meetings and Actions of Work Groups.** Meetings and actions of Work Groups shall be governed by, noticed and held in accordance with written Work Group procedures to be adopted by the board of directors (“**Work Group Procedures**”). The board of directors may amend the Work Group Procedures from time to time. Such Work Group Procedures shall apply to all Work Groups. However, each Work Group may, through its chairperson, propose specific procedures to govern that Work Group (“**Specific Work Group Procedures**”). Specific Work Group Procedures are subject to ratification by the board of directors. Specific Work Group Procedures not otherwise incorporated into the general Work Group Procedures adopted by the board of directors shall apply only to the Work Group proposing such procedures.
- 8.3 **Formation.** Any Originating Promoter or Promoter may propose to the board of directors the establishment of one (1) or more Work Groups to carry out the work of the Corporation. Such proposal shall include the proposed charter of the new Work Group, and the Participants that initially desire to participate in the new Work Group. The board of directors shall (i) approve or disapprove the formation of each Work Group, (ii) approve or disapprove the charter of such Work Group, and (iii) appoint the initial and any replacement chairperson of such Work Group from among the Originating Promoters and Promoters, which chairperson shall serve for a term of one (1) year after which time the board of directors may either replace or reappoint said chairperson. The board of directors shall provide timely notice of the formation and chairperson of each Work Group to all Participants as well as the then-current Work Group Procedures that will govern the actions of such Work Group. Without limiting the powers of the board of directors as stated in these Bylaws, all output of Work Groups, including but not limited to Draft Design Guidelines, and modifications thereto, shall be subject to review and approval of the board of directors in accordance with these Bylaws prior to publication or disclosure by the Corporation and before becoming binding upon the Corporation and the Participants.
- 8.4 **Composition.** Subject to the approval of the Work Group chairperson and the board of directors, an Originating Promoter or Promoter may propose candidates for membership in a Work Group; provided, however, that only Originating Promoters or Promoters shall be entitled to vote on any output or action of a Work Group. All Originating Promoters shall be permanently entitled to appoint representatives to any Work Group. With the exception of Special Participants who may not join any Technical Work Groups, any Participant in good standing may join any Work Group; provided, however, that the board of directors may, from time to time, develop objective minimum standards for membership in Work Groups as part of the general Work Group Procedures or a Work Group may through its chairperson, propose specific minimum standards for membership

which are subject to ratification by the board of directors as Specific Work Group Procedures.

- 8.5 **Record of Activities.** Each Work Group shall elect a secretary or other person to document and record the Work Group's activities.
- 8.6 **Meetings.** Each Work Group shall hold regular meetings on a schedule determined by the Work Group and approved by the board of directors. The noticing of meetings of the Work Group and the governance thereof shall be subject to the Work Group Procedures and Specific Work Group Procedures adopted by the board of directors. Where practical, *Robert's Rules of Order* shall be used as a guide in the conduct of meetings.
- 8.7 **Removal from Work Groups.** The then-current Work Group Procedures and Specific Work Group Procedures shall govern the removal of any member of a Work Group.
- 8.8 **Process for Approval of Design Guidelines.** The Technical Work Group and its subcommittees shall follow the procedures set forth in Sections 18.2 with regard to the review of Draft Design Guidelines and proposed final Design Guidelines.

SECTION 9. EXECUTION OF INSTRUMENTS, DEPOSITS AND FUNDS

- 9.1 **Execution of Instruments.** The board of directors, except as otherwise provided in these Bylaws, may by resolution authorize any officer or agent of the Corporation to enter into any contract or execute and deliver any instrument in the name of and on behalf of the Corporation, and such authority may be general or confined to specific instances. Unless so authorized, no officer, agent, or employee shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable monetarily for any purpose or in any amount.
- 9.2 **Checks and Notes.** Except as otherwise specifically determined by resolution of the board of directors, or as otherwise required by law, checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness of the Corporation with a value of less than Fifty Thousand Dollars (\$50,000) cumulative in any quarterly period may be signed by the President, Treasurer or Executive Director. Checks, drafts, promissory notes, orders for the payment of money, and other evidence of indebtedness in excess of Fifty Thousand Dollars (\$50,000) shall require the signatures of two (2) or more of the above-listed officers and a special resolution of the board of directors.
- 9.3 **Deposits.** All funds of the Corporation shall be deposited from time to time to the credit of the Corporation in such banks, trust companies, or other depositories as the board of directors may select.

SECTION 10. CORPORATE RECORDS AND REPORTS

10.1 **Corporate Records.** The Corporation must keep as permanent records at its principal office:

- (a) minutes of all meetings of the board of directors, a record of all corporate action taken by the board of directors without a meeting, a record of all actions taken by committees of the board of directors on behalf of the Corporation, minutes of all meetings of any Work Group, minutes of all meetings of the Participants or subsets thereof, indicating the time and place of holding such meetings, whether regular or special, how called, the notice given, and the names of those present and the proceedings thereof including all proxies, tax records (including filings, determination letters, applications for exemption, and correspondence with taxing authorities);
- (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 Participants, if any, indicating their names and addresses and, if applicable, the class of participation held by each Participant and the termination date of any Participation Agreement; and
- (d) a copy of the following records:
 - (1) articles or restated articles of incorporation and all amendments to them currently in effect;
 - (2) bylaws or restated bylaws and all amendments to them currently in effect;
 - (3) a list of the names and business or home addresses of the current directors and officers;
 - (4) the last three annual financial statements, if any, which may be consolidated or combined statements of the Corporation, as appropriate, including a balance sheet and statement of operations, if any, for that year, and which must be prepared on the basis of generally accepted accounting principles if financial statements are prepared for the Corporation on that basis;
 - (5) the last three accountant's reports if annual financial statements are reported upon by a public accountant; and
 - (6) the most recent annual report delivered to the Secretary of State.

- 10.2 **Form of Corporate Records.** The Corporation must maintain its records in written form or in another form capable of conversion into written form within a reasonable time.
- 10.3 **Inspection Rights.** Subject to such confidentiality and nondisclosure requirements as the board of directors may reasonably deem appropriate, or restrictions imposed via any confidentiality and nondisclosure agreement concerning any particular record, book or document, all Participants shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the Corporation and shall have such other rights to inspect the books, records and properties of this Corporation as may be required under the Articles of Incorporation, these Bylaws, and the Oregon Nonprofit Corporation Act.
- 10.4 **Right to Copy and Make Extracts.** Unless otherwise restricted pursuant to confidentiality and nondisclosure limitations, any inspection under the provisions of this Section 10 may be made in person or by agent or attorney and the right to inspection shall include the right to copy and make extracts.
- 10.5 **Periodic Report.** The board of directors shall cause any annual or periodic report required under the laws of the State of Oregon to be prepared and delivered to an office of the State of Oregon or to the Participants, if any, of this Corporation, to be so prepared and delivered within the time limits set by law.

SECTION 11. CODE SECTION 501(C)(6) TAX EXEMPTION PROVISIONS

- 11.1 **Limitation on Activities.** Notwithstanding any other provisions of these Bylaws, the Corporation shall not carry on any activities not permitted to be carried on by a Corporation exempt from Federal income tax under Section 501(c)(6) of the Code.
- 11.2 **Prohibition Against Private Inurement.** No part of the Corporation's net earnings shall inure to the benefit of, or be distributable to, its Participants, directors, officers, or other private persons, except that this 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.
- 11.3 **Distribution of Assets.** In the event of liquidation, dissolution, termination, or winding up of the Corporation (whether voluntary, involuntary, or by operation of law), the board of directors shall, after paying or making provisions for the payment of all of the liabilities of the Corporation, transfer all of the property and assets of the Corporation to one or more Qualified Organizations, as defined below, as the board of directors shall determine. For purposes of this Section 11.3 "Qualified Organization" means a corporation or other organization organized and operated exclusively for religious, charitable, educational or other purposes meeting the requirements for exemption provided by Oregon Revised Statutes

317.080 and who at the time (i) is exempt from federal income tax under Section 501(a) of the Code by reason of being an organization described in Section 501(c) of the Code, or (ii) qualifies as an organization to which contributions are deductible under Section 170(c)(1) of the Code.

SECTION 12. AMENDMENT OF BYLAWS

Unless otherwise provided in the Articles of Incorporation or these Bylaws, these Bylaws may only be altered, amended, or repealed, and new Bylaws adopted, upon approval of the board of directors with not more than one (1) dissenting vote. The Corporation must provide notice of any meeting of directors at which an amendment is to be approved. The notice must be in accordance with Section 5.3(a). The notice must also state that the purpose, or one of the purposes, of the meeting is to consider a proposed amendment to these Bylaws and contain or be accompanied by a copy or summary of the amendment or state the general nature of the amendment.

SECTION 13. CONSTRUCTION AND TERMS

- 13.1 **Conflict.** If there is any conflict between the provisions of these Bylaws and the Articles of Incorporation of the Corporation, the provisions of the Articles of Incorporation shall govern.
- 13.2 **Unenforceable.** Should any of the provisions or portions of these Bylaws be held unenforceable or invalid for any reason, the remaining provisions and portions of these Bylaws shall be unaffected by such holdings.
- 13.3 **References.** All references in these Bylaws to the Articles of Incorporation shall be to the Articles of Incorporation filed with an office of the State of Oregon on March 9, 2006, and used to establish the legal existence of the Corporation.

SECTION 14. MEMBERSHIP PROVISIONS

- 14.1 **Determination and Rights of Participants.** The Corporation shall have such classes of participation (“Participation Classifications”) as defined by the board of directors, including the initial classifications set forth in the definition of Participants, above. No Participant shall hold more than one (1) right of participation in the Corporation. For purposes of this Section a Participant and its Affiliates shall be deemed one (1) Participant. Except as expressly provided in or authorized by the applicable Participation Agreements, the Articles of Incorporation, these Bylaws, or the Oregon Nonprofit Corporation Act or law, all Participants shall have the rights, privileges, restrictions and conditions established by resolution of the board of directors. Among the benefits generally to be afforded to the Participants are the right to attend meetings of the Participants of the Corporation, access to Design Guidelines (Special Participants shall not be entitled to access to Draft Design Guidelines) and market requirements documents as may be approved by the board of directors, and access to the general Participant portions of the Corporation’s web site.

- 14.2 **Qualifications for Participation.** Any for-profit corporation, nonprofit corporation, or other enterprise supportive of this Corporation's purposes and not otherwise prohibited by treaty, law or regulation from abiding by the terms of these Bylaws and who pays the then current annual dues applicable to its Participation Classification may become a Participant of the Corporation. Additionally, each Participant hereby agrees to not send representatives to any Work Group of the Corporation for the purpose of obstructing the purpose of the Corporation or the progress or purpose of that Work Group.
- 14.3 **Admission.** Applicants qualified under Section 14.2 shall be admitted to participation upon:
- (a) affirmation of the Articles of Incorporation and these Bylaws;
 - (b) the execution of a Participation Agreement; and
 - (c) payment of the applicable annual dues as specified in the Participation Agreement.
- 14.4 **Fees and Dues.** The annual dues payable to the Corporation by each class of Participants shall be established and may be changed from time to time by resolution of the board of directors. Initial dues shall be due and payable upon execution and submission of a Participation Agreement to join the Corporation. Thereafter, yearly dues shall be due and payable as specified in the Participation Agreement. If any Participant is delinquent in the payment of dues, such Participant's rights shall be deemed suspended upon written notice from the Corporation until all delinquent dues are paid.
- 14.5 **Number of Participants.** There is no limit on the number of Participants the Corporation may admit. Without limiting the foregoing, it is understood that participation as an Originating Promoters shall be limited pursuant to Section 16.1(a), below.
- 14.6 **Participation Roll.** The Corporation shall keep a participation roll containing the name and address, including electronic mail addresses, of each Participant, the date upon which the applicant became a Participant, and the name of one (1) individual from each Participant organization who shall serve as a primary contact for the Corporation, receive all correspondence and information, distribute this information within his or her organization, and vote on all issues submitted to a vote of the Participants. Termination of the participation of any Participant shall be recorded in the roll, together with the date of termination of such participation. Such roll shall be kept at the Corporation's principal office. Participation in the Corporation is a matter of public record; however, participation lists will not be sold or otherwise be made available to third parties.
- 14.7 **Nonliability of Participants.** No Participant of this Corporation, as such, shall be individually liable for the debts, liabilities, or obligations of the Corporation.

14.8 **Nontransferability of Participations.** All rights of participation cease upon the Participant's dissolution. No Participation Agreement may be assigned without the prior written consent of the Corporation, and any purported assignment without such written approval shall be null and void.

14.9 **Termination of Participation.**

- (a) The participation of a Participant shall terminate upon the occurrence of any of the following events:
- (1) Upon a failure to initiate or renew participation by paying dues on or before their due date, such termination to be effective thirty (30) days after a written notification of delinquency is given personally or mailed to such Participant by the Secretary or Executive Director of the Corporation. A Participant may avoid such termination by paying the amount of delinquent dues within thirty (30) days from the Participant's receipt of the written notification of delinquency.
 - (2) Upon fifteen (15) days' written notice from the Participant to the board of directors indicating the Participant's desire to terminate its participation in the Corporation; provided, however, that all obligations of the Participant to the Corporation incurred prior to the date of termination shall survive such termination in accordance with the terms and conditions of Section 18.11, below.
 - (3) Upon unanimous vote of all disinterested directors when such directors determine, after affording the Participant in question the right to be heard on the issue, that the Participant has violated the policies, procedures and duties of participation contained in these Bylaws and in the Participant's Participation Agreement.
 - (4) Upon a Participant's dissolution.
- (b) In the event that two (2) or more Participant organizations are merged or a Participant organization is acquired by another Participant organization, the resulting entity shall have only one (1) participation and one (1) vote. The former voting Participant may, however, upon written notice to the Board, be permitted to continue attendance at meetings on a nonvoting basis and be provided with notices thereof.
- (c) All rights of a Participant in the Corporation shall cease on termination of participation as herein provided. A Participant terminated from the Corporation shall not receive any refund of dues already paid for the current dues period.

SECTION 15. MEETINGS OF THE PARTICIPANTS

15.1 Place of Meetings.

- (a) Meetings of the Participants shall be designated from time to time by resolution of the board of directors, which resolution shall specify the meeting place and time.
- (b) The board of directors may permit any or all Participants to participate in a meeting by, or conduct the meeting through, use of any means of communication by which either all Participants participating may simultaneously hear or read each other's communications during the meeting or all communications during the meeting are immediately transmitted to each participating Participant, or each participating Participant is able to immediately send messages to all other participating Participants.
- (c) If a meeting is conducted through the use of any means described in Section 15.1(b), all participating Participants must be informed that a meeting is taking place at which official business may be transacted; and a Participant participating in the meeting by this means is deemed to be present in person at the meeting.

15.2 **Regular Meetings.** The annual meetings of the Participants shall be held for the purpose of conducting such business as may come before the meeting. Each of the annual meetings of the Participants shall be deemed a regular meeting. Other regular meetings of the Participants shall be held on dates and at times to be determined by the board of directors, with the expectation that there will be at least one (1) additional meeting of Participants each quarter.

15.3 Notice of Meetings.

- (a) Unless the Oregon Nonprofit Corporation Act provides otherwise, regular meetings of the Participants shall be preceded by at least ninety (90) days' notice to each Participant of the date, time and place of the meeting. With the exception of notice to Promoters accompanied by ballots for the election of Elected Directors, the notice to the Participants need not describe the purpose of the meeting.
- (b) Special meetings of the Participants must be preceded by at least seven (7) days' notice to each Participant of the date, time and place of the meeting. The notice need not describe the purpose of the special meeting.
- (c) The board of directors or three-quarters (3/4) of the Participants may call and give notice of a meeting or special meeting of the Participants by written request to the Executive Director.

- (d) The primary means for the provision of notice shall be via electronic mail to the Participant at the electronic mail address as it appears on the records of the Corporation, provided that the Participant to be contacted shall acknowledge personal receipt of the electronic message by a return electronic message or telephone call within three (3) business days of the first notification. If notification is provided by mail (including the U.S. Postal Service, express courier services and the like), such notice shall be deemed to be delivered when deposited in the mail addressed to the Participant at his or her address as it appears on the records of the Corporation, with postage prepaid. Personal notification may also include notification by telephone, facsimile, or other electronic means; provided, however, such notification shall be subject to any and all acknowledgment requirements as may be set forth in the Oregon Nonprofit Corporation Act.

15.4 **Waiver of Notice.**

- (a) A Participant may at any time waive any notice required by the Oregon Nonprofit Corporation Act, the Articles of Incorporation or these Bylaws. Except as provided in Section 15.4(b), the waiver must be in writing, must be signed by the Participant entitled to the notice, must specify the meeting for which notice is waived and must be filed with the minutes or the corporate records.
- (b) A Participant's attendance at or participation in a meeting waives any required notice to the meeting unless the Participant, at the beginning of the meeting, or promptly upon arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any action taken at the meeting.

15.5 **Quorum for Meetings of Participants.** Those Participants present at a properly noticed meeting of the Participants shall constitute a quorum.

15.6 **Participant Action.**

- (a) Every act or decision done or made by a majority of Participants (including the members of the board of directors) present in person at a duly held meeting at which a quorum is required and present is the act of the Participants.
- (b) Every act or decision done or made by a majority of Participants present in person at a properly noticed annual meeting of Participants is the act of the Participants; provided, however, that with the exception of Originating Promoters' and Promoters' votes on Elected Board members, Participant action shall at all times be advisory in nature only and shall not be binding upon the board of directors.

15.7 **Voting.**

With the exception of voting for Elected Board members, which shall be governed by Section 4.5, above, each Participant shall have one (1) vote on each matter submitted to a vote by the Participants. Except as provided in Section 15.8, the Participant's designated employee shall do all voting in person (including via telephonic means) and not by proxy. Voting at meetings shall be by a show of hands if held in person, or by voice ballot if held by audio, videoconferencing or teleconferencing, unless otherwise required. Results of all ballots shall duly be distributed to all Participants by the Executive Director within thirty (30) days of each ballot. Written confirmation of any and all ballots shall be maintained with the Corporation's minutes.

15.8 **Action by Written Ballot.**

- (a) Except as otherwise provided under the Articles of Incorporation, these Bylaws, or the Oregon Nonprofit Corporation Act, any action which may be taken at any regular or special meeting of Participants may be taken without a meeting or in conjunction with a meeting if the Corporation distributes a written ballot to each Participant entitled to a vote.
- (b) The ballot shall:
 - (1) set forth the proposed action and/or slate of candidates;
 - (2) provide an opportunity to select individuals or specify approval or disapproval of each proposal or a vote for candidates, as appropriate;
 - (3) indicate the number of responses needed and the percentage of approvals necessary to pass the measure submitted; and
 - (4) specify the date by which the ballot must be received by the Corporation in order to be counted. The date set shall afford Participants a reasonable time within which to return the ballots to the Corporation.
- (c) Ballots shall be mailed or delivered in the manner required for giving notice of Participant meetings as specified in these Bylaws.

15.9 **Conduct of Meetings.** Meetings of Participants shall be presided over by the President of the Corporation or, in his or her absence, by the Vice President of the Corporation or, in the absence of all of these persons, by a chairperson designated by the board of directors, or in the absence of a timely designation by the board of directors, by a majority of the Promoters present. The Secretary of the Corporation shall act as Secretary of all meetings of the Participants, provided that, in his or her absence, the presiding officer shall appoint another person to act as Secretary of the Meeting. Meetings shall be governed by such procedures as

may be approved from time to time by the board of directors, insofar as such rules are not inconsistent with or in conflict with the Articles of Incorporation, these Bylaws, or with the Oregon Nonprofit Corporations Act. Where practical, *Robert's Rules of Order* shall be used as a guide in the conduct of meetings.

SECTION 16. PARTICIPATION CLASSIFICATIONS

16.1 Originating Promoters.

- (a) The Corporation shall have Originating Promoters, whose identities are set forth in Section 1, above. After the organizational meeting of the Corporation, no new Originating Promoters shall be admitted to the Corporation. All Originating Promoters must execute a Participation Agreement and pay the fees called for thereon for Originating Promoters. All Originating Promoters shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants. In addition, Originating Promoters shall be granted the specific additional rights stated in Section 16.1(b).
- (b) Among other benefits specifically afforded to Originating Promoters who remain in good standing are:
 - (1) the permanent right to appoint a representative to a Permanent Seat on the board of directors;
 - (2) the right to be listed (with a hyperlink to the Originating Promoter's web site) as an Originating Promoter on the Corporation's web site;
 - (3) the right to access any and all portions of the Corporation's web site and any electronic transmissions therefrom via reflector. This right includes access to the Originating Promoter-only discussion groups and the Corporation's mailing lists (subject to any privacy policy that the Corporation may adopt);
 - (4) the right to access Participant-only confidential information, including but not limited to Draft Design Guidelines and internal working documents of the Corporation;
 - (5) subject to the then-current Work Group Procedures that will govern the actions of Work Groups of the Corporation, the right to participate in, chair, and vote on activities of such Work Groups;
 - (6) the right to attend and participate in compliance workshops conducted by the Corporation and, upon successful product certification by the Corporation, to generally advertise the same. This right may include the right to place links to the Originating Promoter's product information on the Corporation's web site;

- (7) the right to technical support with regard to then-supported Design Guidelines of the Corporation when and if such services are provided by the Corporation;
- (8) the right to receive support documentation and materials concerning the Corporation's Design Guidelines;
- (9) subject to such procedures as may be adopted by the board of directors, the right to review and approval Draft Design Guidelines and Design Guidelines;
- (10) the right to submit proposed revisions and addendum proposals for the Corporation's Design Guidelines;
- (11) the preferential right of first refusal (prior to Promoters or Contributors) to actively participate in the Corporation's marketing and promotional activities at trade shows and other industry events; and
- (12) the right to be listed as an Originating Promoter in all press releases of the Corporation.

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

16.2 Promoters.

- (a) The Corporation shall have Promoters, who may be invited to join the Corporation in such capacity only upon nomination by two or more Originating Promoters. Upon nomination of a candidate Promoter, the board of directors may only reject the candidate via a motion carried by a vote of not less than the current total number of directors, less three (3). If no such motion is raised, or passed, then the board of directors shall forward an invitation to the candidate to join the Corporation as a Promoter. All Promoters must execute a Participation Agreement and pay the fees called for thereon for Promoters. Once accepted, all Promoters shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants. In addition, Promoters shall be granted the specific additional rights stated in Section 16.2(b).
- (b) Among other benefits specifically afforded to Promoters who remain in good standing are:
 - (1) the right to be listed (with a hyperlink to the Promoter's web site) as a Promoter on the Corporation's web site;
 - (2) the right to access any and all portions of the Corporation's web site and any electronic transmissions therefrom via reflector. This

right includes access to the discussion groups limited to Promoters and Originating Promoters, and the Corporation's mailing lists (subject to any privacy policy that the Corporation may adopt);

- (3) the right to access Participant-only confidential information, including but not limited to Draft Design Guidelines and internal working documents of the Corporation;
- (4) subject to the then-current Work Group Procedures that will govern the actions of Work Groups of the Corporation, the right to participate in, chair, and vote on activities of such Work Groups;
- (5) the right to attend and participate in compliance workshops conducted by the Corporation and, upon successful product certification by the Corporation, to generally advertise the same. This right may include the right to place links to the Promoter's product information on the Corporation's web site;
- (6) the right to technical support with regard to then-supported Design Guidelines of the Corporation when and if such services are provided by the Corporation;
- (7) the right to receive support documentation and materials concerning the Corporation's Design Guidelines;
- (8) subject to such procedures as may be adopted by the board of directors, the right to review Draft Design Guidelines;
- (9) the right to submit proposed revisions and addendum proposals for the Corporation's Design Guidelines;
- (10) the right to nominate a Promoter representative to stand for election to an Elected Seat on the board of directors of the Corporation once the number of seats is expanded beyond the initial number;
- (11) the preferential right of first refusal (prior to Contributors) to actively participate in the Corporation's marketing and promotional activities at trade shows and other industry events; and
- (12) the right to be listed as a Promoter in all press releases of the Corporation.

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

16.3 Contributors.

- (a) The Corporation shall have Contributors. Admission as a Contributor shall be open to any party. All Contributors must execute a Participation Agreement and pay the fees called for thereon for Contributors. Once accepted, all Contributors shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants. In addition, Contributors shall be granted the specific additional rights stated in Section 16.3(b).
- (b) Among other benefits specifically afforded to Contributors who remain in good standing are:
 - (1) The right to be listed as a Participant on the Corporation's web site;
 - (2) The right to access any and all portions of the Corporation's web site and any electronic transmissions therefrom via reflector. This right includes access to the Participant-only discussion groups and the Corporation's mailing lists (subject to any privacy policy that the Corporation may adopt);
 - (3) The right to access Participant-only confidential information, including but not limited to Draft Design Guidelines and internal working documents of the Work Groups on which the Participant serves;
 - (4) Subject to the then-current Work Procedures that will govern the actions of Work Groups of the Corporation, the right to participate, in a non-voting capacity, in the activities of such Work Groups;
 - (5) The right to attend and participate in compliance workshops conducted by the Corporation and, upon successful product certification by the Corporation, to generally advertise the same;
 - (6) The right to technical support with regard to then-supported Design Guidelines of the Corporation when and if such services are provided by the Corporation;
 - (7) The right to receive support documentation and materials concerning the Corporation's Design Guidelines; and
 - (8) Subject to such procedures as may be adopted by the board of directors, the right to review and comment on Draft Design Guidelines of the Corporation prior to their adoption by the Corporation.

In addition to the foregoing, the board of directors may from time to time approve other benefits to which all Contributor Participants may be entitled.

16.4 Governmental Entity Participant

- (a) The Corporation shall have Governmental Entity Participants who may be invited to join the Corporation in such capacity only upon nomination by two or more Originating Promoters. Admission as a Governmental Entity Participant shall be limited to National, State/Province, Regional and City governmental entities. All Governmental Entity Participants must execute a Governmental Entity Participation Agreement and pay the fees called for therein, if any. Once accepted, all Governmental Entity Participants shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants except for the right to participate in, or attend, meetings of the Technical Work Group, or any subcommittee thereof. Additionally, Governmental Entity Participants shall not be permitted to participate in Draft Design Guideline or Design Guideline review per Section 18, below, nor shall Governmental Entity Participants be entitled to any certification or compliance testing offered by the Alliance on such Design Guidelines. Governmental Entity Participants shall not therefore be bound by any of the duties or obligations of Section 18 of the Bylaws, nor shall Applicant be entitled to the benefits of Section 18 of the Bylaws. In addition, Governmental Entity Participants shall be granted the specific additional rights stated in Section 16.4(b).
- (b) Among other benefits specifically afforded to Governmental Entity Participants who remain in good standing are:
 - (1) The right to be listed as a Participant on the Corporation's web site;
 - (2) The right to access certain portions of the Corporation's web site and any electronic transmissions therefrom via reflector;
 - (3) The right to access Participant-only confidential information, but not including Draft Design Guidelines and internal working documents of the Technical Work Group or any subgroup thereof;
 - (4) Subject to the restriction on participation in the Technical Work Group and the then-current Work Procedures that will govern the actions of Work Groups of the Corporation, the right to participate, in a non-voting capacity, in the activities of all other Work Groups; and
 - (5) The right to receive support documentation and materials concerning the Corporation's Design Guidelines.

16.5 Supporting Participant

- (a) The Corporation shall have Supporting Participants who may be invited to join the Corporation in such capacity only upon nomination by two or more Originating Promoters. Admission as a Supporting Participant shall be limited to entities and associations who develop and/or maintain and license technical specifications used or useful in the development of the Corporation's Design Guidelines. All Supporting Participants must execute a Supporting Participation Agreement and pay the fees called for therein, if any. Once accepted, all Supporting Participants shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants except for the right to participate in, or attend, meetings of the Technical Work Group, or any subcommittee thereof. Additionally, Supporting Participants shall not be permitted to participate in Draft Design Guideline or Design Guideline review per Section 18, below, nor shall Supporting Participants be entitled to any certification or compliance testing offered by the Alliance on such Design Guidelines. Supporting Participants shall not therefore be bound by any of the duties or obligations of Section 18 of the Bylaws, nor shall Applicant be entitled to the benefits of Section 18 of the Bylaws. In addition, Supporting Participants shall be granted the specific additional rights stated in Section 16.5(b).
- (b) Among other benefits specifically afforded to Supporting Participants who remain in good standing are:
- (1) The right to be listed as a Participant on the Corporation's web site;
 - (2) The right to access certain portions of the Corporation's web site and any electronic transmissions therefrom via reflector;
 - (3) The right to access Participant-only confidential information, but not including Draft Design Guidelines and internal working documents of the Technical Work Group or any subgroup thereof;
 - (4) Subject to the restriction on participation in the Technical Work Group and the then-current Work Procedures that will govern the actions of Work Groups of the Corporation, the right to participate, in a non-voting capacity, in the activities of all other Work Groups; and
 - (5) The right to receive support documentation and materials concerning the Corporation's Design Guidelines.

16.6 Provider Group Participant

- (a) The Corporation shall have Provider Group Participants who may be invited to join the Corporation in such capacity only upon nomination by two or more Originating Promoters. Admission as a Provider Group Participant shall be limited to entities and associations who represent the end users of products and services provided for under the Corporation's Design Guidelines. All Provider Group Participants must execute a Provider Group Participation Agreement and pay the fees called for therein, if any. Once accepted, all Provider Group Participants shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants except for the right to participate in, or attend, meetings of the Technical Work Group, or any subcommittee thereof. Additionally, Provider Group Participants shall not be permitted to participate in Draft Design Guideline or Design Guideline review per Section 18, below, nor shall Provider Group Participants be entitled to any certification or compliance testing offered by the Alliance on such Design Guidelines. Provider Group Participants shall not therefore be bound by any of the duties or obligations of Section 18 of the Bylaws, nor shall Applicant be entitled to the benefits of Section 18 of the Bylaws. In addition, Provider Group Participants shall be granted the specific additional rights stated in Section 16.6(b).
- (b) Among other benefits specifically afforded to Provider Group Participants who remain in good standing are:
 - (1) The right to be listed as a Participant on the Corporation's web site;
 - (2) The right to access certain portions of the Corporation's web site and any electronic transmissions therefrom via reflector;
 - (3) The right to access Participant-only confidential information, but not including Draft Design Guidelines and internal working documents of the Technical Work Group or any subgroup thereof;
 - (4) Subject to the restriction on participation in the Technical Work Group and the then-current Work Procedures that will govern the actions of Work Groups of the Corporation, the right to participate, in a non-voting capacity, in the activities of all other Work Groups; and
 - (5) The right to receive support documentation and materials concerning the Corporation's Design Guidelines.

16.7 Research and Education Entity Participant

- (a) The Corporation shall have Research and Education Entity Participants who may be invited to join the Corporation in such capacity only upon nomination by two or more Originating Promoters. Admission as a Research and Education Entity Participant shall be limited to accredited research and higher educational institutions who desire access to the Corporation's published Design Guidelines for teaching or research purposes. All Research and Education Entity Participants must execute a Research and Education Entity Participation Agreement and pay the fees called for therein, if any. Once accepted, all Research and Education Entity Participants shall be entitled to all rights and bound to the obligations generally afforded and imposed upon all Participants except for the right to participate in, or attend, meetings of the Technical Work Group, or any subcommittee thereof. Additionally, Research and Education Entity Participants shall not be permitted to participate in Draft Design Guideline or Design Guideline review per Section 18, below, nor shall Research and Education Entity Participants be entitled to any certification or compliance testing offered by the Alliance on such Design Guidelines. Research and Education Entity Participants shall not therefore be bound by any of the duties or obligations of Section 18 of the Bylaws, nor shall Applicant be entitled to the benefits of Section 18 of the Bylaws. In addition, Research and Education Entity Participants shall be granted the specific additional rights stated in Section 16.7(b).
- (b) Among other benefits specifically afforded to Research and Education Entity Participants who remain in good standing are:
- (1) The right to be listed as a Participant on the Corporation's web site;
 - (2) The right to access certain portions of the Corporation's web site and any electronic transmissions therefrom via reflector;
 - (3) The right to access Participant-only confidential information, but not including Draft Design Guidelines and internal working documents of the Technical Work Group or any subgroup thereof;
 - (4) Subject to the restriction on participation in the Technical Work Group and the then-current Work Procedures that will govern the actions of Work Groups of the Corporation, the right to participate, in a non-voting capacity, in the activities of all other Work Groups; and
 - (5) The right to receive support documentation and materials concerning the Corporation's Design Guidelines.

SECTION 17. CONFIDENTIALITY

- 17.1 **Confidential Information.** The Participants intend to engage in discussions regarding the Design Guidelines, governance and marketing of the Corporation. During the course of these discussions the Participants may choose to exchange confidential and proprietary business and technical information in furtherance of the purposes of this Corporation. The Participants wish to protect the confidential and proprietary nature of such information. All information disclosed to the other Participants that is clearly marked “confidential” or with some other proprietary notice of the discloser, or that is orally identified as confidential or proprietary, shall be deemed “**Confidential Information**”. A party disclosing Confidential Information orally shall confirm the designation in writing, within thirty (30) days of disclosure.
- 17.2 **Obligation of Confidentiality.** Each Participant will maintain Confidential Information in confidence with at least the same degree of care that it uses to protect its own confidential and proprietary information, but no less than a reasonable degree of care under the circumstances, and will neither use, disclose nor copy such Confidential Information, except as necessary for its affiliates, directors, officers, agents, attorneys and contractors or employees with a need to know for the purpose of participation in the Corporation (“**Representatives**”). Any copies of writings containing Confidential Information which are made or disclosed in this manner will be marked “confidential” or “proprietary” or with a similar legend. Unless the Participants agree otherwise, this obligation of confidentiality will expire three (3) years from the date of the original disclosure. However, the Participants will not be liable for the disclosure of any information which is:
- (a) rightfully in the public domain other than by the Participants’ breach of a duty of confidentiality;
 - (b) rightfully received from a third party without any obligation of confidentiality;
 - (c) rightfully known to the recipient without any limitation on use or disclosure prior to its receipt from the disclosing Party;
 - (d) independently developed by employees of the Participants;
 - (e) rightfully disclosed as required by law; or
 - (f) is the subject of a written permission to disclose by the Party disclosing in accordance with these Bylaws.

Nothing contained in these bylaws will preclude any Participant from proffering or entering into nondisclosure agreements with other Participants.

- 17.3 **No Obligation of Disclosure – Termination.** The Participants have no obligation to disclose Confidential Information to the other Participants. Any Party may, at any time: (a) cease giving Confidential Information to the other Participants without any liability, and/or (b) request in writing the return or destruction of all or part of its Confidential Information previously disclosed hereunder, and all copies thereof, and the other Participants will promptly comply with such request, and certify in writing its compliance.
- 17.4 **Residuals.** As a result of engaging in the development effort referred to in these Bylaws, and the receipt of Confidential Information, each Party may increase or enhance the knowledge or experience, and the written expression thereof, retained without reference to printed or electronic documents in the memories of each of its Representatives. Notwithstanding anything else to the contrary in these Bylaws, each Representative may use and disclose such knowledge, experience, and the written expression thereof in his or her employment with his or her Participant. With respect to the knowledge and experience and written expression thereof, no Party or its Representatives, shall (1) intentionally memorize it so as to reduce it to an intangible form for the purpose of creating or using a residual, or (2) avoid the Party’s obligation to maintain its confidentiality merely by having a person commit such item to memory so as to reduce it to an intangible form. No Party who owns Confidential Information shall acquire or be entitled to any rights in the business endeavor of any other Party that may use such knowledge or experience, or the written expression thereof, nor any right to compensation related to another Party’s use of such knowledge, experience or written expression.
- 17.5 **Survival.** This Section 17 shall survive any termination of participation pursuant to Section 14.9 or any other reason.

SECTION 18. INTELLECTUAL PROPERTY RIGHTS

The obligations and benefits of this Section 18 shall not apply to Special Participants. Any copyright or trademark grants or licenses to Special Participants shall be governed by separate agreements between the Special Participants and the Corporation.

- 18.1 **Definitions.** The following definitions shall apply to this Section 18:
- (a) **“Compliant Portion”** means only those specific portions of products (hardware, software or combinations thereof) that: (i) implement and are compliant with all relevant portions of a Design Guideline, and (ii) are within the bounds of the Scope.
 - (b) **“Contribution”** and **“Contributed”** means a submission by a Participant proposing an addition to or modification of a Draft Design Guideline or portion thereof, or an existing Design Guideline or portion thereof, provided that the submission is either (i) submitted in writing (including a writing in electronic medium) or (ii) stated orally, memorialized with

specificity in the written minutes of a meeting, and attributed in the meeting minutes to the submitting Participant, provided that the minutes are promptly provided to the individual representing the submitting Participant, unless the submitting Participant withdraws its submission in writing as soon as practicable and in any event, no later than forty-five (45) days of receipt of such written minutes.

- (c) **“Design Guideline”** means a document entitled “Design Guideline” that:
 - (i) consists of requirements and recommendations based on references to combinations of technical specifications published or otherwise made available for implementation by entities other than the Corporation (such as companies and standards organizations), that when implemented together, enable interoperability of health and medical sensor devices, display interfaces, connectors, aggregation computation devices and service networks, and
 - (ii) has been adopted and approved for release by the Corporation, including any updates or revisions adopted and approved for release by the Corporation, all in accordance with Section 18.2.
- (d) **“Draft Design Guideline”** means a document in development or under consideration for adoption as a Design Guideline that has not been adopted or approved by the Corporation in accordance with Section 18.2. The Technical Work Group developing the Draft Design Guidelines shall make its best efforts to identify non-Contributed claims of patent that may be implicated in the Design Guideline.
- (e) **“Necessary Claims”** means those claims of all patents and published patent applications, other than design patents and design registrations, throughout the world which a Participant or its Affiliates has the right, any time during the term of these Bylaws, to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of royalties or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by compliance with the express terms of a Design Guideline adopted and approved for release by the Corporation and which are within the bounds of the Scope, where such infringement could not have been avoided by another commercially reasonable noninfringing implementation of such Design Guideline. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.
- (f) **“Scope”** means those protocols, electrical signaling characteristics, register models, communication and network interface protocols, application program interfaces, service provider interfaces, physical dimensions and characteristics, and/or data structures solely to the extent disclosed with particularity in the Design Guideline where the primary purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within the Design Guideline.

Notwithstanding the foregoing, the Scope shall not include: (i) any technology that may be necessary to develop, design, manufacture, sell or use any product or portion thereof that complies with the Design Guideline but is not expressly set forth in Design Guideline (examples of such technologies include without limitation semiconductor manufacturing technology, compiler technology, object oriented technology, operating system technology); or (ii) the implementation or use of other published specifications developed elsewhere but referred to in the body of the Design Guideline; or (iii) portion of any product or any combination of products (or portions of products) that are not required for compliance with the Design Guideline. The Scope shall include only architectural and interconnection requirements of the Design Guideline and shall not include any implementation examples contained in the Design Guideline unless the Design Guideline expressly states that such implementation examples are to be included within the Scope of the limited patent license.

18.2 **Draft Design Guideline Review and Notice.**

- (a) **Draft Guidelines; License Review Period.** A Technical Work Group, to be chartered by the Board of Directors, shall have the responsibility for drafting and developing Draft Guidelines. At such time as the Technical Work Group determines that a Draft Guideline is ready for final review, the Draft Guideline shall be sent to the Board of Directors for their approval. Upon such approval, the Board of Directors shall send the complete copies of the Draft Guideline to the Participants for review pursuant to Section 18.2(b), below. The Board of Directors may, in its sole discretion, elect to conduct a technical review of any Draft Guideline prior to considering the Draft Guideline for approval. If the Board of Directors does not approve a Draft Guideline, the Secretary will return such Draft Guideline to the Technical Work Group.
- (b) **Draft Guidelines Review.** For a period of sixty (60) days from the date that the Board of Directors sends a Draft Guideline to the Participants as contemplated above, the Participants, on behalf of themselves and their Affiliates, may review the same for any Necessary Claims that may be implicated by the Draft Guideline. While there is no requirement for a Participant to review its patent portfolio for Necessary Claims, Participants are advised that unless they provide a timely Licensing Objection pursuant to Section 18.2(c), or notice of withdrawal pursuant to Section 18.2(d), before the end of this sixty (60) day period, the Participant is committing to the licensing provisions of Section 18.4 with regard to Necessary Claims implicated by the Draft Guideline, if and when the Draft Guideline implicating those Necessary Claims is adopted by the Corporation as a Final Guideline in accordance with this Section 18.2.
- (c) **Licensing Objection.** In the event that the Participant in good faith believes that the implementation of Necessary Claims in the Draft

Guideline would require a license from that Participant, and that such Participant is unwilling to provide a license under such Necessary Claims in accordance with Section 18.4, below, that Participant must within the review period of Section 18.2(b) provide written notification to the Executive Director of its intent not to grant licenses under such Necessary Claims (“Licensing Objection”). Notwithstanding the foregoing, a Participant shall not have the right to submit a Licensing Objection with respect to (i) any Necessary Claims in any Contribution submitted by such Participant or its Affiliate, or (ii) any Necessary Claims that were implicated in prior versions of the Draft Guideline currently under review (and that had been previously reviewed pursuant to this Section 18.2). Such Licensing Objection will include written identification of any Necessary Claims that such Participant refuses to license hereunder. In the event that a Participant properly submits a Licensing Objection within the license review period set forth in Section 18.2(b), above, such Participant shall not be required to grant licenses under the identified Necessary Claims. The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Licensing Objections.

- (d) **Withdrawal.** In lieu of delivering a Licensing Objection pursuant to Section 18.2(c), a Participant (including its Affiliates) who has not made a Contribution to the Draft Guideline may provide notice to the Executive Director that it withdraws from participation in the Corporation pursuant to this subsection (“Notice of Withdrawal”), if that Participant determines that the Draft Guideline implicates Necessary Claims which that Participant is unwilling to license to the other Participants pursuant to Section 18.4. A Participant wishing to exercise the right to withdraw under this provision must deliver notice of withdrawal not later than the end of the review period for the applicable Draft Guideline referenced in Section 18.2(b). Said notice must include written identification of any Necessary Claims that it does not wish to license hereunder. The Board of Directors shall have the discretion to implement and require a standard form document for the submission of Notices of Withdrawal.
- (e) **Responding to any Licensing Objection or Notice of Withdrawal; Subsequent Draft Guideline Reviews.** Any and all Licensing Objections and/or Notices or Withdrawal timely received by the Executive Director shall be immediately forwarded to both the Board of Directors and the Technical Work Group. Upon receipt of a Licensing Objection and/or Notice of Withdrawal, the Board of Directors shall determine whether to cause either the full Technical Work Group, or an ad-hoc subcommittee thereof, to review and evaluate each Licensing Objection and Notice of Withdrawal, as well as to identify alternative design options or recommendations for the Draft Guideline. The Technical Work Group or subcommittee thereof shall deliver to the Board of Directors the results of its findings within a reasonable period of time (hereinafter referred to as

the “Licensing Objection Evaluation”). Should the Technical Work Group or ad-hoc subcommittee thereof recommend material changes to the Draft Guideline, then the Technical Work Group shall commence the necessary modifications to the Draft Guideline. Once modified, the Draft Guideline review process started in Section 18.2(a), above, shall commence again. Should the Technical Work Group or ad-hoc subcommittee thereof recommend that no material changes be made to the Draft Guideline, then the Draft Guideline shall proceed for final approval pursuant to Section 18.2(f), below.

(f) **Approval of Final Guidelines.** After completion of the Draft Guideline review process stated in Sections 18.2(a) through 18.2(e), above, the Technical Work Group shall submit such Draft Guideline to the Board of Directors for final review. If the Board of Directors approves such Draft Guideline via an affirmative vote of the total number of Directors, less one (1), then the Draft Guideline shall become a Final Guideline. In the event that the Board of Directors fails to approve such Draft Guideline as a Final Guideline, such Draft Guideline shall be returned to the Technical Work Group. Promptly after approval of a Draft Guideline as a Final Guideline, the Board of Directors shall distribute a copy thereof to all Participants, together with a list of such Participants who have submitted effective Licensing Objections and/or Notices or Withdrawal with respect thereto

18.3 **New Participants.** If, during the review period stated in Section 18.2(a), a prospective Participant shall apply for Participation in the Corporation, then subject to the execution of such confidentiality and/or nondisclosure agreements as the Corporation may determine necessary, such prospective Participant shall be permitted not less than forty-five (45) calendar days to review the Design Guideline then under review for any and all Necessary Claims and to agree in a separate affirmative writing to be committed to the licensing provisions of Section 18.4, as to such pending Design Guideline if it is adopted by the Corporation. Failure to provide such written affirmation shall be deemed a withdrawal of the prospective Participant’s application for participation..

18.4 **Licensing of Participant Intellectual Property Rights.** When the Participant or its Affiliate makes a Contribution to a Design Guideline of the Corporation, including revisions thereto, or when the Corporation adopts and approves for release a Design Guideline after providing notice as set forth in Sections 18.2, then barring notice from the Participant pursuant to Sections 18.2(c) or (d), the Participant and its Affiliates hereby agree to grant to other Participants and their Affiliates under reasonable terms and conditions that are demonstrably free of any unfair discrimination, a nonexclusive, nontransferable, irrevocable (except upon breach by licensee), worldwide license (with or without compensation) under its Necessary Claims to allow such Participants to make, have made, use, import, offer to sell, lease, sell and otherwise distribute Compliant Portions, provided that such agreement to license shall not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Each Participant agrees that it will not transfer, and has not transferred,

patents having Necessary Claims for the purpose of circumventing this Section 18.4.

- 18.5 **Reciprocity.** The provisions of Section 18.4 concerning the grant of patent licenses between Participants shall not be effective as to any other Participant or that other Participant's Affiliates, if that Participant or its Affiliates do not, in fact and practice, make the patent license grant of Section 18.4 available to the other Participants and their Affiliates.
- 18.6 **Retention of Rights.** Nothing contained in this Section 18 shall be deemed as requiring a Participant or its Affiliates to grant or withhold any license or sublicense of an individual Participant's patents containing Necessary Claims to non-Participants on such terms as the Participant or its Affiliates may determine.
- 18.7 **No Other License.** The Participants agree no license, immunity or other right is granted under these Bylaws by any Participant or its Affiliates to any other Participants or their Affiliates or to the Corporation, either directly or by implication, estoppel or otherwise, other than the agreements to grant licenses expressly set forth in this Section 18.
- 18.8 **Transfer of Necessary Claims.** Each Participant agrees that it will not transfer, and has not transferred, patents or published patent applications having Necessary Claims solely for the purpose of circumventing such Participant's obligations under this Section 18. In the event a Participant assigns or transfers a patent or published patent application containing, or consisting of, Necessary Claims in Contributions made by the Participant prior to, or at the time of, the assignment or transfer, the Participant agrees to exercise reasonable efforts to notify the assignee or transferee that such patents or published patent applications may be subject to the licensing provisions of Section 18.4, above.
- 18.9 **Copyrights.**
- (a) To the Corporation. The Participants grant to the Corporation a worldwide, irrevocable, nonexclusive, nontransferable copyright license to reproduce, create derivative works, distribute, display, perform and sublicense the rights to reproduce, distribute, display and perform the Contributions of the granting Participant solely for the purposes of developing, publishing and distributing Design Guidelines and related materials.
- (b) From the Corporation. As to Design Guidelines adopted by the Corporation prior to or during a Participant's membership in the Corporation, or other copyrighted materials of the Corporation, the Corporation grants each Participant a worldwide, irrevocable (except for breach), nonexclusive, nonsublicensable, nontransferable copyright license to, internally (within the Participant company including Affiliates or, subject to a restricted use nondisclosure agreement, third party contractors

of Participant) reproduce, distribute, perform, create derivative works of and display the Design Guidelines and promotional materials, solely for the purposes of developing products based upon the Design Guideline, procuring products based upon the Design Guidelines, or designing, developing or implementing internal systems and processes based upon the Design Guidelines. This license to the Participants expressly excludes the right to create derivative works except under the restrictions set forth in this Section 18.9(b).

18.10 **Trademarks.** In the event that the Corporation proposes to adopt any other name or logo as a trademark or trade name (collectively “**Trademarks**”), the Corporation shall notify the Participants in writing of the proposal. The Corporation shall take such steps as the board of directors deems necessary and proper to protect its rights under such Trademarks adopted for use by the Corporation. In furtherance thereof, the board of directors shall establish and disseminate reasonable conditions and procedures for the licensing and use of such Trademarks, demonstrably free of any unfair discrimination among the Participants.

18.11 **Survival of Agreement to Grant License.** Notwithstanding the dissolution of the Corporation or a Participant’s termination or non-renewal of its participation in the Corporation and except as provided in Section 18.12, a Participant’s agreement to grant a license as provided in Sections 18.4 and 18.5 shall remain in full force and effect for: (a) any Necessary Claim to a Contribution made to a later adopted Design Guideline or any Necessary Claim to a Design Guideline adopted before the effective date of dissolution or before the effective date of a Participant’s termination, withdrawal or expiration of participation; and (b) any Necessary Claims to a Design Guideline adopted by the Corporation after the effective date of the Participant’s termination, withdrawal or expiration of participation that are necessary for the future Design Guideline to be backwards compatible with the Design Guidelines subject to Section 18.11(a), above, provided that subject matter licensed under the new Design Guideline are used in a substantially similar manner and to a substantially similar extent with a substantially similar result as the subject matter under the prior Design Guideline for which the Participant is obligated to grant licenses. In no event is a withdrawn Participant obligated to license any additional Necessary Claims under this Section 18. A withdrawn Participant shall remain entitled to reciprocity pursuant to Section 18.5 so long as that withdrawn Participant remains obligated to license any Necessary Claims under this Section 18. This agreement to the survival of reciprocal licensing shall extend to all Participants, including Participants who become Participants after the effective date of a departing Participant’s termination or expiration.

18.12 **Exception in the Event of Noncompliance.** The agreement to license, which survives under Section 18.11, shall terminate completely as to any Design Guideline which does not include all applicable requirements for interoperating, communicating or connecting with or to products that comply with Design

Guidelines that were in effect sixty (60) days prior to the effective date of the Participant's termination or expiration or participation, or sixty (60) days prior to the effective date of dissolution of the Corporation.

- 18.13 **Publicity.** No Participant will, without the prior written consent of the applicable Participant, (a) use in any advertising, publicity, or otherwise, the name of such other Participant or any trade name, trademark, service mark, symbol, or logo, or any abbreviation, contraction, or simulation thereof, owned by such other Participant; (b) use the name of such other Participant in public communications, press releases, sales, material, product literature, web sites, or grant applications; or (c) represent, either directly or indirectly, that any product or service of such other Participant is a product or service of the representing Participant or that such product or service is made or delivered in accordance with or utilizes the information or documents of such other Participant.
- 18.14 **Right to Make Voluntary Disclosures of Necessary Claims.** Nothing in this Section 18, shall be construed as prohibiting Participants from voluntarily disclosing the presence of Necessary Claims of the Participant that may be found in Draft Design Guidelines or Design Guidelines of the Corporation. Such disclosure shall not, however, be deemed as a waiver of a Participants rights under Section 18.2 or Section 18.3, above.
- 18.15 **Obligation of Good Faith.** The Participants acknowledge and agree that the obligations of this Section 18 shall be governed by the principals of good faith and fair dealing.

SECTION 19. DISPUTES AND DISPUTE RESOLUTION

- 19.1 **Application.** The following provisions apply in the event of dispute between a Participant and the Corporation. Notwithstanding anything else herein, this Section 19 shall only apply to disputes between the Corporation and its Participants and shall not apply to any disputes between Participants or between the Participants and third parties.
- 19.2 **Waiver of Warranties.** ALL DESIGN GUIDELINES OF THE CORPORATION ANY INTELLECTUAL PROPERTY OF THE CORPORATION THEREIN AND ANY CONTRIBUTIONS TO DESIGN GUIDELINES MADE BY MEMBERS ARE PROVIDED "AS IS," AND WITHOUT ANY WARRANTY OF ANY KIND, INCLUDING WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTY OF NONINFRINGEMENT, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.
- 19.3 **Limitation of Liability.** IN NO EVENT SHALL THE CORPORATION BE LIABLE TO ITS MEMBERS, OR ITS MEMBERS LIABLE TO CORPORATION, IN CONNECTION WITH THE CONTRACTUAL NATURE OF THESE BYLAWS OR ANY INTELLECTUAL PROPERTY RIGHTS

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

- 19.4 **Mediation.** The parties agree to first submit any controversy or claim between any Participant and the Corporation arising out of or relating to these Bylaws, or the breach thereof, to nonbinding mediation in New York, New York, by a mediator to be selected by the parties from a panel selected by the International Chamber of Commerce (“**ICC**”) ADR Dispute Resolutions Services. The parties agree to mediate in good faith over a minimum period of thirty (30) days.
- 19.5 **Arbitration.** Any controversy or claim between any Participant and the Corporation arising out of or related to these Bylaws not resolved by mediation shall be settled by binding arbitration in accordance with the Arbitration Rules (the “**Rules**”) of the ICC, and the procedures set forth below. In the event any inconsistency between the Rules of ICC and the procedures set forth below, the procedures set forth below shall control. Judgment upon the award rendered by the arbitrator may be enforced in any court having jurisdiction thereof.
- (a) Location. The location of the mediation and arbitration shall be in New York, New York, or a location where the parties mutually agree.
 - (b) Selection of Arbitrators. The arbitration shall be conducted by a panel of three (3) ICC arbitrators who are independent and disinterested with respect to the Corporation. If the parties are unable to agree to arbitrators, the arbitrators shall be appointed by ICC from among their panelists with relevant expertise.
 - (c) Case Management. Prompt resolution of any dispute between any Participant and Corporation is important to all parties and the parties agree that the arbitration of any such dispute shall be conducted expeditiously. The arbitrators shall be instructed and directed to assume case management initiative and control over the arbitration process (including scheduling of events, prehearing discovery and activities), in order to complete the arbitration as expeditiously as possible.
 - (d) Remedies. The arbitrators may grant such legal or equitable remedy or relief (including injunctive relief) that the arbitrators deem just and equitable, to the same extent that such remedy or relief could be granted by a State or Federal court; provided, however, that such remedy or relief is consistent with the remedies and limitations set forth in these Bylaws.

- (e) Expenses. The expenses of the arbitration, including the arbitrators' fees, shall be shared equally among the parties. Each party shall be responsible for its own attorneys' fees, including expert witnesses.
- (f) Confidentiality. Except as set forth below, the parties shall keep confidential the fact of the arbitration, the dispute being arbitrated, and the decision of the arbitrators. Notwithstanding the foregoing, the parties may disclose information about the arbitration to persons who have a need to know, such as directors, trustees, experts, investors, insurers, legal counsel, and when required to disclose by applicable securities laws.
- (g) Intellectual Property. There shall be no arbitration of issues of the validity, infringement or enforceability of patents or copyrights. Further, this section does not apply to any intellectual property rights of a Participant with respect to other Participants or third parties.

19.6 **Survival**. This Section 19 shall survive any termination of participation pursuant to Section 14.9 or any other reason.

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CERTIFICATE OF SECRETARY

I hereby certify:

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

The foregoing Bylaws comprising 45 pages, including this page, constitute the original Bylaws of the Corporation as duly adopted by the board of directors of said Corporation.

IN WITNESS WHEREOF, I have hereunder subscribed my name this ____ day of _____, 2009.

By: _____
 Print Name: _____
 Secretary