

**BYLAWS  
OF  
NEW ENGLAND HEALTHCARE EXCHANGE NETWORK, INC.  
(THE “CORPORATION”)**

**ARTICLE I**

**MEMBERS**

Section 1. Membership. There shall be two classes of Members in the Corporation, Class A Members and a Class B Member. The Class A Members shall initially consists of those entities that were members of New England Healthcare EDI Network, LLC as of the date of the organization of the Corporation. Class A Members may be health plans, hospitals, integrated delivery systems, or medical groups, but a majority of the Class A members must always be section 501(c)(3) or 501(c)(4) organizations. The sole Class B Member shall be the Massachusetts Health Data Consortium, Inc., a Massachusetts charitable corporation. At any special or regular meeting, the Board of Directors may, by a majority vote, admit new Class A Members. The Members shall have no voting rights, other than the right to vote for the election of Directors and as otherwise provided by the General Corporation Law of the State of Delaware and the provisions of these Bylaws; provided however, that the approval of the Members shall be required to take any of the actions set forth in Section 12 of this Article I.

Section 2. Annual Meeting. An annual meeting of the Members, for the election of the Directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held on such date and at such time as shall be fixed from time to time by the Board of Directors and stated in the notice of the meeting.

Section 3. Special Meetings. Special meetings of Members may be called at any time by the Board of Directors, the Chairman of the Board, if any, the President, or by any two Members. Upon request in writing to the Chairman of the Board, if any, President, any Vice-President or the Secretary by any person (other than the Board) entitled to call a special meeting of Members, the officer forthwith shall cause notice to be given to the Members entitled to vote, that a meeting will be held at a time fixed by the Board.

Section 4. Place of Meetings. Subject to Section 5 hereof, all meetings of Members for any purpose shall be held at such place as shall be designated by the person or persons calling the meeting and stated in the notice of the meeting.

Section 5. Remote Meetings. The Board of Directors may, in its sole discretion, determine that the meeting shall not be held at any place, but may instead be held solely by means of remote communication. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, Members

and proxyholders not physically present at a meeting of Members may, by means of remote communication:

(a) participate in a meeting of Members; and

(b) be deemed present in person and vote at a meeting of Members whether such meeting is to be held at a designated place or solely by means of remote communications, provided that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a Member or proxyholder, (ii) the Corporation shall implement reasonable measures to provide such Members and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the Members, including an opportunity to read or hear the proceedings of the meeting substantially or concurrently with such proceedings, and (iii) if any Member or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 6. Notices of Meetings and Adjourned Meetings. A written notice of each annual or special meeting of the Members stating the place (if any), date, and hour thereof, the means of remote communication, if any, by which the Members and proxyholders may be deemed to be present in person and vote at such meeting, and shall be given by the Secretary (or the person or persons calling the meeting), in person, by mail, by facsimile, by email transmission or by any other means of electronic communication to each Member entitled to vote thereat, not less than 10 nor more than 60 days before the date of the meeting. The notice of a special meeting of the Members shall state the purpose or purposes for which the meeting is called. An affidavit of the Secretary, Assistant Secretary, or transfer agent of the Corporation that the notice has been given shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

Section 7. Quorum. At any meeting of the Members, a quorum for the transaction of business shall consist of the Members appearing in person or represented by proxy and representing a majority of the Members, provided that less than such quorum shall have power to adjourn the meeting from time to time.

Section 8. Voting. Unless otherwise provided in the Certificate of Incorporation and subject to the provisions of Section 11 of this Article I, each Member shall have one vote. No Member may transfer a Membership or any right arising from it.

Section 9. Proxies. Members may vote either in person or by written proxy granted to another Member and dated not more than six months before the meeting named therein. Proxies shall be filed with the Secretary before being voted at any meeting or any adjournment thereof. Except as otherwise limited therein, proxies shall entitle the persons named therein to vote at the meeting specified therein and at any adjourned session of such meeting but shall not be valid after final adjournment of the meeting. A proxy may be made irrevocable. A Member may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by

filing with the Secretary of the Corporation an instrument in writing or as otherwise permitted by law revoking the proxy or another duly executed proxy bearing a later date. A proxy purporting to be executed by or on behalf of a Member shall be deemed valid unless challenged at or prior to its exercise and the burden of proving invalidity shall rest on the challenger.

Section 10. Action at Meeting. When a quorum is present at any meeting, action of the Members on any matter properly brought before such meeting shall require, and may be effected by, the affirmative vote of a majority of the Members voting on such matter, except where a different vote is required by law, the Certificate of Incorporation or these Bylaws. If the Certificate of Incorporation so provides, no ballot shall be required for any election unless requested by a Member present or represented at the meeting and entitled to vote in the election. At any meeting at which a quorum is present, a plurality of the votes properly cast for election to fill any vacancy on the Board of Directors shall be sufficient to elect a candidate to fill such vacancy, and a majority of the votes properly cast upon any other question shall decide the question, except in any case where a larger vote is required by law, the Certificate of Incorporation, these Bylaws, or otherwise.

Section 11. Action by Written Consent.

(a) Any action required by law to be taken at any annual or special meeting of Members, or any action which may be taken at any annual or special meeting of such Members, may be taken without a meeting, without prior notice and without a vote, if a consent in writing or by electronic transmission, setting forth the action so taken, shall be signed by not less than the minimum number of Members that would be necessary to authorize or take such action at a meeting at which all Members were present. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those Members who have not consented in writing; such consent shall be effective as of the date stated therein and shall be filed with the minutes of the meetings of the Members.

(b) An electronic transmission consenting to an action to be taken and transmitted by a Member or proxyholder, or by a person or persons authorized to act for a Member or proxyholder, shall be deemed to be written, signed and dated for the purposes of this section, provided that any such electronic transmission sets forth or is delivered with information from which the Corporation can determine (1) that the electronic transmission was transmitted by the Member or proxyholder or by a person or persons authorized to act for the Member or proxyholder, and (2) the date on which such Member or proxyholder or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. No consent given by electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Members are recorded. Delivery made to a Corporation's registered office shall be made by

hand or by certified or registered mail, return receipt requested. Notwithstanding the foregoing limitations on delivery, consents given by electronic transmission, may be otherwise delivered to the principal place of business of the Corporation or to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of Members are recorded if, to the extent and in the manner provided by resolution of the Board of Directors of the Corporation.

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

Section 12. Powers Reserved to Members. Notwithstanding any other provision to the contrary in these Bylaws, approval of the majority of the Members, voting as a single class, shall be required to take the following actions:

- (a) any merger, consolidation or other business combination transaction involving the Corporation;
- (b) any sale, transfer, master lease or other disposition of all or any substantial portion of the Corporation's assets;
- (c) any change, or proposed change, in the tax status of the Corporation; or
- (d) any amendment, or proposed amendment, to these Bylaws or the Certificate of Incorporation of the Corporation, provided that any amendment that would diminish the rights of the Class B Member also shall require the written concurrence of the Class B Member.

Section 13. Withdrawal. A Member may withdraw from the Corporation with or without cause on ninety (90) days prior written notice to the President and Secretary of the Corporation. After withdrawal, a former Member shall retain the perpetual non-exclusive, royalty free license granted to it pursuant to Article V of these Bylaws, but only with respect to intellectual property developed by or for the Corporation through the date of withdrawal.

Section 14. Admission of New Members. Any entity that becomes a Member by a majority vote of the Directors pursuant to Section 1 of this Article I, whether or not such entity has accepted and assumed in writing the terms and provisions of these Bylaws, shall be deemed by virtue of such admission as a Member, to have agreed to be subject to and bound by all of the obligations of these Bylaws, including, but not limited to, the provisions of Article V.

## **ARTICLE II**

### **DIRECTORS**

Section 1. Powers. Except as otherwise provided in these Bylaws, the Board of Directors (the "Board"), shall have the entire charge, control and management of the Corporation and its property and may exercise all or any of its powers.

Section 2. Number of Directors; Election; Tenure. Except as otherwise provided by these Bylaws or in the Certificate of Incorporation, the Directors shall be elected or appointed by the Members at the annual meeting or as provided in Section 3 or 4 of this Article II. The Board of Directors shall consist of fourteen (14) persons: (i) eleven (11) Directors elected by the Class A Members, and (ii) three (3) Directors appointed by the Class B Member. The Directors elected by the Class A members shall be representatives of the Class A members, as follows: three (3) shall be representatives of health plans, one (1) shall represent an integrated delivery system, one (1) shall represent a community hospital, and one (1) shall represent a physician group. The remaining five (5) Directors to be appointed by the Class A Members shall be those elected by an at-large vote of the Class A Members from among the Class A Members not represented on the Board.

The Directors elected by the Class A Members shall be divided into three classes of three (3) Directors each. Each class shall include at least one Member that is a health plan director. Directors shall serve for a term of three (3) years and until his or her successor is nominated and ratified, or until his or her earlier resignation or removal; provided, however, that each initial class of Directors shall be elected to such shorter terms as is necessary to ensure that one class of Directors comes up for election every year thereafter. There shall be no limitation on the number of terms that an otherwise eligible person may serve as a Director. The Directors shall solicit suggested nominations from the Members, and shall nominate and present a slate of proposed Directors (such slate to be approved by three-quarters (3/4) of the Directors) to the Members for election by a Majority of the Members. If the nominees are not ratified by Majority of the Members, the Directors shall propose an alternative slate of nominees for ratification.

The Directors initially appointed by the Class B Member shall have staggered terms, such that one Director shall be appointed for a three year term, one shall be appointed for a two year term, and one shall be appointed for a one year term. Thereafter, each Director appointed by the Class B Member shall be appointed for a three year term. The Class B Member shall appoint individuals who are suited by experience and background to help the Corporation advance its purposes, and so far as is practicable, who can represent the view points of stakeholders who are not already represented by the elected Directors.

Section 3. Vacancies and Newly Created Directorships. A vacancy or vacancies in the Board shall be filled by the Board, provided however a vacancy caused by the death, resignation, incapacity or removal of a Director appointed by the Class B Member shall be filled by action of the Class B Member. A successor Director selected to fill a vacancy shall serve for the unexpired

term of the predecessor and until a successor has been elected or appointed and qualified. A vacancy or vacancies in the Board shall be deemed to exist in case of the death, resignation, incapacity or removal of any Director or if the authorized number of Directors is increased.

The Board may declare vacant the office of a Director who has been declared of unsound mind by a final order of court, convicted of a felony, or found by a final order or judgment of any court to have breached any material duty arising under the General Corporation Law of the State of Delaware or any other state in which the Corporation operates. Any reduction of the number of Directors authorized in these Bylaws shall not have the effect of removing any Director prior to the expiration of the Director's term of office.

Section 4. Removal. Any Director may be removed with or without cause, by a majority of Directors. The Directors or Class B Member, as applicable, may appoint a successor representative to fill the unexpired terms of the removed Director, subject to the requirements of Section 2.

Section 5. Resignation. Any Director of the Corporation may resign at any time by giving notice in writing or by electronic transmission to the Board of Directors, the Chairman of the Board, if any, to the President, or to the Secretary, and any Member of a committee may resign at any time by giving notice as aforesaid, or to the chairman or secretary of such committee. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. A vacancy caused by a resignation be filled by the Board of Directors or by the Class B Member, as applicable.

Section 6. Annual Meeting. The Board shall hold an annual meeting for the purposes of organization, election of officers and the transaction of other business. This annual meeting shall be held without call or notice on such date and at such time as the Board shall from time to time determine; provided, however, should such day fall upon a holiday observed by the Corporation at its principal office, then such meeting shall be held at the same time on the next business day.

Section 7. Regular Meetings. Regular meetings of the Directors may be held at such times and places as shall from time to time be fixed by resolution of the Board, and no notice need be given of regular meetings held at times and places so fixed, provided, however, that any resolution relating to the holding of regular meetings shall remain in force only until the next annual meeting of Members and that, if at any meeting of Directors at which a resolution is adopted fixing the times or place or places for any regular meetings any Director is absent, no meeting shall be held pursuant to such resolution without notice to or waiver by such absent Director pursuant to Section 9 of this Article II.

Section 8. Special Meetings. Special meetings of the Directors may be called by the President, the Chairman of the Board, if any, or by any one or more Directors, and shall be held at the place and on the date and hour designated in the call thereof.

Section 9. Notices. Notices of any special meeting of the Directors shall be given by the Secretary or an Assistant Secretary to each Director, by mailing to him or her, postage prepaid, and addressed to him or her at his or her last known address, a written notice of such meeting, at least four days before the meeting, or by delivering such notice to him or her at least twelve (12) hours before the meeting or by sending to him or her at least twelve (12) hours before the meeting, by facsimile transmission, e-mail or any other means of electronic transmission, notice of such meeting. In the absence of both such officers, such notice may be given by the officer or one of the Directors calling the meeting. Notice need not be given to any Director who has waived notice (a) in writing executed by him or her before or after the meeting and filed with the records of the meeting, or (b) by attending the meeting except for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. A notice or waiver of notice of a meeting of the Directors need not specify the business to be transacted at or the purpose of the meeting.

Section 10. Quorum. At any meeting of the Directors a majority of the total number of Directors shall constitute a quorum for the transaction of business; provided always that any number of Directors (whether one or more and whether or not constituting a quorum) present at any meeting or at any adjourned meeting may adjourn such meeting, provided that all absent Directors receive or waive notice pursuant to Section 9 of Article II of any such adjournment that exceeds four business days.

Section 11. Action at Meeting. At any meeting of the Directors at which a quorum is present, the action of the Directors on any matter brought before the meeting shall be decided by vote of a majority of those present and voting, unless a different vote is required by law, the Certificate of Incorporation, or these Bylaws.

Section 12. Action by Written Consent. Any action required or permitted to be taken at any meeting of the Board of Directors, or of any committee thereof, may be taken without a meeting if all Members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, and the writing or writings or electronic transmission are filed with the minutes of proceedings of the Board or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 13. Telephone Meetings. Members of the Board of Directors, or any committee thereof, may participate in a meeting of such Board or committee by means of telephone conference or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 13 shall constitute presence in person at such meeting.

Section 14. Place of Meetings. Meetings of the Board of Directors shall be held at the main offices of the Corporation, or at such other location as the Board shall determine and set forth in the notice of such meeting.

Section 15. Compensation. No payment shall be made by the Corporation to any Director for such Director's services as a Director except as expressly provided in these Bylaws. A Director may be reimbursed for expenses incurred by such Director in managing and conducting the business and affairs of the Corporation, if approved by the Directors. The Directors, acting by approval, shall determine which expenses, if any, are allocable to the Corporation in a manner that is fair and reasonable to the Directors and the Corporation.

Section 16. Contracts with Affiliated Persons. With the approval of the Directors in each case, the Corporation may enter into one or more agreements, leases, contracts or other arrangements for the furnishing to or by the Corporation of goods, services or space with any Member, Directors or affiliated person, and may pay compensation for such goods, services or space; provided, however, in each case the amounts payable are reasonably comparable to those which would be payable to unaffiliated persons under similar agreements.

Section 17. Committees.

(a) The Board of Directors may, by majority vote, designate an executive or other committee, each committee to consist of one or more of the Directors of the Corporation. The Board may designate one or more Directors as alternate Members of any committee, who may replace any absent or disqualified Member at any meeting of a committee. In the absence or disqualification of a Member of a committee, the Member or Members thereof present at any meeting and not disqualified from voting, whether or not such Member or Members constitute a quorum, may unanimously appoint another Member of the Board of Directors to act at the meeting in the place of any such absent or disqualified Member. Any such committee, to the extent provided in the resolution of the Board of Directors, or in these Bylaws, shall have and may exercise the power and authority delegated to them from time to time by the Boards; provided however, that no committee shall have the power or authority to (i) approve or adopt, or recommend to the Members, any action or matter expressly required by the Delaware General Corporation Law or these Bylaws to be submitted to the Members for approval, (ii) adopt, amend or repeal the Bylaws or Certificate of Incorporation of the Corporation, or (iii) adopt or approve any action that otherwise must be considered by the full Board of Directors.

(b) At any meeting of any committee, a majority of the whole committee shall constitute a quorum and, except as otherwise provided by statute, the Certificate of Incorporation, or these Bylaws, the affirmative vote of at least a majority of the Members present at a meeting at which there is a quorum shall be the act of the committee.

(c) Each committee, except as otherwise provided by resolution of the Board of Directors, shall fix the time and place of its meetings within or without the State of Delaware, shall adopt its own rules and procedures, and shall keep a record of its acts and proceedings and report the same from time to time to the Board of Directors.

Section 18. Service Charges; Capital Assessments. The Corporation may levy service charges or capital assessments on the Class A Members as is required to enable the Corporation to pay expenses that have been approved by the Directors. All such service charges or capital assessments shall be subject to approval by the Directors. This subsection shall not confer rights on any person that is not a Member or Director of the Corporation, and the Directors may not, by virtue of these Bylaws, be required to approve any service charge or assessment.

### **ARTICLE III**

#### **OFFICERS**

Section 1. Officers and Election. The officers of the Corporation shall be a President, a Secretary, a Treasurer and such Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers as the Board of Directors may from time to time determine and elect or appoint. All officers shall be elected annually by the Board of Directors and shall hold office until their successors are duly elected and qualified. With the exception of the Chairman of the Board, if any, who must also be a Member of the Board of Directors, the officers may, but need not be, Members of the Board of Directors. Two or more offices may be held by the same person, except that neither the Secretary nor the Treasurer may serve concurrently as the President.

Section 2. Term of Office. All officers shall, unless sooner removed under the provisions of these Bylaws, hold office until the next annual election of officers and thereafter until their respective successors are elected and qualified or until their earlier resignation or removal.

Section 3. Vacancies. Any vacancy at any time existing in any office may be filled by the Directors.

Section 4. Chairman of the Board. The Chairman of the Board, if any, shall have such duties and powers as shall be designated from time to time by the Board of Directors. Unless the Board of Directors otherwise specifies, the Chairman of the Board shall preside, or designate the person who shall preside, at all meetings of the stockholders and of the Board of Directors.

Section 5. President. The President shall be the chief executive officer and shall have direct charge of all business operations of the Corporation and, subject to the control of the Directors, shall have general charge and supervision of the business of the Corporation. In such capacity, (i) it shall be his or her duty and he or she shall have the power to see that all orders and resolutions of the Board of Directors are carried into effect; and (ii) he or she shall from time to time report to the Board of Directors all matters within his or her knowledge which the interests of the Corporation may require to be brought to its notice. Unless there is a Chairman of the Board or the Board of Directors otherwise specifies, the President shall preside, or designate the person who shall preside, at all meetings of the Members and of the Board of Directors. The President shall perform such other duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 6. Vice Presidents. In the absence or disability of the President, his or her powers and duties shall be performed by the Vice President, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each Vice President shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 7. Treasurer. The Treasurer shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation in such depositories as shall be designated by the Board of Directors or in the absence of such designation in such depositories as he or she shall from time to time deem proper. He or she shall disburse the funds of the Corporation as shall be ordered by the Board of Directors, taking proper vouchers for such disbursements. He or she shall promptly render to the President and to the Board of Directors such statements of his or her transactions and accounts as the President and Board of Directors respectively may from time to time require. The Treasurer shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 8. Assistant Treasurers. In the absence or disability of the Treasurer, his or her powers and duties shall be performed by the Assistant Treasurer, if only one, or if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Treasurer shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 9. Secretary. The Secretary shall issue notices of all meetings of Members, of the Board of Directors and of committees thereof where notices of such meetings are required by law or these Bylaws. He or she shall record the proceedings of the meetings of the Members and of the Board of Directors and shall be responsible for the custody thereof in a book to be kept for that purpose. He or she shall also record the proceedings of the committees of the Board of Directors unless such committees appoint their own respective secretaries. He or she shall sign such instruments as require his or her signature. The Secretary shall have custody of the corporate seal and shall affix and attest such seal on all documents whose execution under seal is duly authorized. In his or her absence at any meeting, an Assistant Secretary or the Secretary pro tempore shall perform his or her duties thereat. He or she shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 10. Assistant Secretaries. In the absence or disability of the Secretary, his or her powers and duties shall be performed by the Assistant Secretary, if only one, or, if more than one, by the one designated for the purpose by the Board of Directors. Each Assistant Secretary shall perform such duties and have such powers additional to the foregoing as the Board of Directors shall designate.

Section 11. Salaries. The salaries and other compensation of officers, agents and employees shall be fixed from time to time by or under authority from the Board of Directors.

No officer shall be prevented from receiving a salary or other compensation by reason of the fact that he or she is also a Director of the Corporation.

Section 12. Removal. The Board of Directors may remove any officer, either with or without cause, at any time.

Section 13. Resignations. Any officer, agent or employee of the Corporation may resign at any time by giving written notice to the Board of Directors, to the Chairman of the Board, if any, to the President or to the Secretary of the Corporation. Any such resignation shall take effect at the time specified therein, or, if the time be not specified, upon receipt thereof; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### **ARTICLE IV**

##### **CAPITAL STOCK**

The Corporation is not authorized to issue capital stock.

#### **ARTICLE V**

##### **ACTIVITIES; LICENSES**

Section 1. Electronic Data Exchange Network Service. The Corporation shall maintain and operate an electronic health information exchange network service (the “Network Service”) for the primary use and benefit of healthcare insurers, health maintenance organizations, health plans, other risk management entities, hospitals, integrated delivery networks, physician practices, medical management organizations, and others with a need for such services. All services shall be rendered in a matter consistent with the Certificate of Incorporation.

Section 2. License Agreements.

(a) The Corporation shall enter into a license agreement with each Class A Member and their respective affiliates, granting a perpetual, royalty free non-exclusive license to use the intellectual property developed by or for the Corporation and its predecessors, the New England Healthcare EDI Network, LLC and MA-SHARE, LLC (hereinafter, the “Licensed Technology”), to enable the electronic exchange of administrative and clinical health information through the Network Service. The terms of the license agreement entered into with a particular Member may vary depending upon the services to which that Member subscribes. Nothing in these bylaws shall bar the Directors from approving license agreements with persons or entities who are not Members.

(b) The licenses granted pursuant to this Section shall be used only for the purpose of engaging in electronic data interchange using the Network Service as contemplated by the Certificate of Incorporation and only with the Corporation's trading partners, Members, former Members (and their respective affiliates) of the Corporation as contemplated by the Certificate of Incorporation. The Corporation and its Members shall not otherwise sell, assign, convey or license such intellectual property without the approval of the Directors. The Corporation shall not be obligated to support, maintain, enhance, or provide upgrades to software or documentation licensed pursuant to these Bylaws, except as approved by the Directors. Notwithstanding any other provision of these Bylaws, the Directors shall not have any authority to limit or revoke any license to use intellectual property granted to a Member. Each license granted to a Member shall survive and remain in effect notwithstanding a Member's withdrawal or removal as a Member of the Corporation, and without regard to whether a Member otherwise remains a Member of the Corporation. However, once a Member has withdrawn, it shall not have any rights with respect to intellectual property developed by the Corporation after the date of withdrawal. For the purposes of this Section, a Member's "affiliate" shall include any entity that owns or controls, directly or indirectly, 10% or more of the membership, equity or other beneficial ownership in such Member, and any entity in which a Member owns or controls 10% or more of the membership, equity or beneficial interest.

(d) Nothing in these Bylaws shall give the Corporation rights to intellectual property developed by a Member independently of its participation in a project carried out in conjunction with the Corporation. Nothing in these Bylaws shall give the Corporation or any other Person rights to any data, proprietary or not, transmitted using the Network Service. The Corporation and its Members acknowledge that each Member has the right to independently develop or obtain from other sources intellectual property with functions or purposes similar to Licensed Technology and that neither the Corporation nor the other Members shall have any rights in such intellectual property so long as it is not derived from or an enhancement of the Licensed Technology.

## ARTICLE VI

### MISCELLANEOUS PROVISIONS

Section 1. Stock in Other Corporations. The President, or such other officers as the Board may authorize for that purpose, are each authorized to vote, represent and exercise on behalf of the Corporation all rights incident to any and all shares of any other corporation or corporations standing in the name of the Corporation. The authority granted in these Bylaws to any officer to vote or represent this Corporation arising from any shares held by this Corporation in any other Corporation or Corporations may be exercised either by the officer in person or by any person authorized so to do by proxy or power of attorney duly execute by such officer.

Section 2. Checks, Notes, Drafts and Other Instruments. Checks, notes, drafts and other instruments for the payment of money drawn or endorsed in the name of the Corporation may be signed by any officer or officers or person or persons authorized by the Board of Directors to sign the same. No officer or person shall sign any such instrument as aforesaid unless authorized by the Board of Directors to do so.

Section 3. Corporate Seal. The seal of the Corporation shall be in such form as the Board of Directors may from time to time prescribe (and, unless otherwise so prescribed, shall be circular in form, bearing the name of the Corporation, the word "Delaware," and the year of incorporation), and the same may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 4. Books and Records; Fiscal Year. The Directors shall cause the Corporation to keep just and true books of account with respect to the operations of the Corporation. Such books shall be maintained at the principal place of business of the Corporation, or at such other place as the Directors shall determine, and all Members, and their duly authorized representatives, shall at all reasonable times have access to such books. Any Member may, at any time, at his, her or its own expense, cause an audit or review of the books of the Corporation to be made by a certified public accountant of his, her or its own selection. Such books shall be kept on the accrual basis method of accounting, or on such other method of accounting as the Directors may from time to time determine, and shall be closed and balanced as of March 31 in each year unless otherwise approved by the Directors. The same method of accounting shall be used for both accounting and tax purposes. The fiscal year of the Corporation shall be the year ending with March 31, unless otherwise determined by the Directors.

Section 5. Severability. If any term or provision of the Bylaws, or the application thereof to any person or circumstances or period of time, shall to any extent be invalid or unenforceable, the remainder of the Bylaws shall be valid and enforced to the fullest extent permitted by law.

Section 6. Amendments. The Bylaws may be amended or repealed only by the Members voting as a single class, provided that any amendment that would diminish the rights of the Class B Member also must be approved in writing by the Class B Member.

## ARTICLE VII

### **INDEMNIFICATION OF DIRECTORS, OFFICERS AND OTHERS**

Section 1. The Corporation shall indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware as presently in effect or as hereafter amended:

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

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

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

Section 2. The Board of Directors, in its discretion, may authorize the Corporation to indemnify, to the fullest extent permitted by the General Corporation Law of the State of Delaware as presently in effect or as hereafter amended:

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

(b) Any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that he or she is or was an employee or agent of the Corporation, or is or was serving at the request of the Corporation as an employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) and amounts paid in settlement actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Corporation and except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is

fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 3. Any indemnification under this Article VII (unless required by law or ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the Director, officer, employee or agent is proper in the circumstances because he or she has met the applicable standard of conduct set forth in Sections 1 and 2 of this Article VII. Such determination shall be made (i) by a majority vote of the Directors who are not parties to such action, suit or proceeding, even though less than a quorum, (ii) if there are no such Directors, or if such Directors so direct, by independent legal counsel in a written opinion, or (iii) by the Members.

Section 4. Expenses incurred by a Director or officer in defending a civil or criminal action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of the Director or officer to repay such amount if it shall ultimately be determined that he or she is not entitled to be indemnified by the Corporation as authorized in this Article VII. Any advance under this Section 4 shall be made promptly, and in any event within ninety days, upon the written request of the person seeking the advance.

Section 5. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall not be deemed exclusive of any other rights to which any person, whether or not entitled to be indemnified under this Article VII, may be entitled under any statute, bylaw, agreement, vote of Members or disinterested Directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office. Each person who is or becomes a Director or officer as described in Section 1 shall be deemed to have served or to have continued to serve in such capacity in reliance upon the indemnity provided for in this Article VII. All rights to indemnification under this Article VII shall be deemed to be provided by a contract between the Corporation and the person who serves as a Director or officer of the Corporation at any time while these Bylaws and other relevant provisions of the General Corporation Law of the State of Delaware and other applicable law, if any, are in effect. Any repeal or modification thereof shall not affect any rights or obligations then existing.

Section 6. The Board of Directors may at any time and from time to time cause the Corporation to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a Director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him or her and incurred by him or her in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power to indemnify him or her against such liability under the provisions of the General Corporation Law of the State of Delaware (as presently in effect or hereafter amended), the Certificate of Incorporation of the Corporation or these Bylaws.

Section 7. The Corporation's indemnification under Sections 1 and 2 of this Article VII of any person who is or was a Director, officer, employee or agent of the Corporation, or is or was serving, at the request of the Corporation, as a Director, officer, employee or agent of another Corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person receives as indemnification (i) under any policy of insurance purchased and maintained on his or her behalf by the Corporation, (ii) from such other Corporation, partnership, joint venture, trust or other enterprise, or (iii) under any other applicable indemnification provision.

Section 8. In the discretion of the Board of Directors of the Corporation, for the purposes of this Article VII, references to "the Corporation" may also include any constituent Corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its Directors or officers, so that any person who is or was a Director or officer of such constituent Corporation, or is or was serving at the request of such constituent Corporation as a Director or officer of another Corporation, partnership, joint venture, trust or other enterprise, would stand in the same position under the provisions of this Article VII with respect to the resulting or surviving Corporation as he or she would have with respect to such other constituent Corporation if its separate existence had continued.

Section 9. In addition to and without limiting the foregoing provisions of this Article VII and except to the extent otherwise required by law, any person seeking indemnification under or pursuant to Section 1 of this Article VII shall be deemed and presumed to have met the applicable standard of conduct set forth in Section 1 unless the contrary shall be established.

Section 10. For purposes of this Article VII, references to "other enterprises" shall include employee benefit plans; references to "fines" shall include any excise taxes assessed on a person with respect to any employee benefit plan; and references to "serving at the request of the Corporation" shall include any service by a Director or officer of the Corporation which imposes duties on, or involves services by, such person with respect to any employee benefit plan, its participants, or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VII.

Section 11. To the extent that a present or former Director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1 or in Section 2, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection therewith.

Section 12. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VII shall continue as to a person who has ceased to be a Director, officer,

employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

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