

BY-LAWS
OF
R CONSORTIUM, INC.

ARTICLE I

NAME, PURPOSE AND OFFICES

Section 1.1 Name

The name of the corporation is “R Consortium, Inc.” and the corporation is referred to in these By-laws as the “R Consortium”.

Section 1.2 Principal Office

The principal office of the R Consortium shall be located at 660 York Street, San Francisco, CA 94110. The Board of Directors of the R Consortium (the “Board”) is hereby granted full power and authority to change its principal office from one location to another both within and without said state.

Section 1.3 Other Offices

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

Section 1.4 Purpose

The nature of the business or purposes to be conducted or promoted by the R Consortium is to engage in any lawful act or activity for which corporations that are organized not for profit may be organized under the General Corporation Law of Delaware. The primary purpose of the R Consortium (collectively, the “Purpose”) is to: (a) advance the worldwide promotion of and support for the R open source language and environment as the preferred language for statistical computing and graphics (the “Environment”); (b) establish, maintain, seek support for, and develop infrastructure projects and technical and infrastructure collaboration initiatives related to the Environment, and such other initiatives as may be appropriate to support, enable and promote the Environment; (c) encourage and increase user adoption, involvement with, and contribution to, the Environment; (d) facilitate communication and collaboration among users and developers of the Environment, the R Consortium and the R Foundation for Statistical Computing (the “R Foundation”); (e) support and maintain policies set by the Board; and (f) undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above. In furtherance of these efforts, the R Consortium shall seek to solicit the participation of all interested parties on a fair, equitable and open basis.

Section 1.5 Nonprofit Status

- (a) The R Consortium is organized and shall be operated as a non-stock, not for profit membership corporation organized under the General Corporation Law of the State of Delaware.
- (b) The Board may, in its sole discretion, elect to seek exemption from Federal taxation for the R Consortium pursuant to Section 501(a) of the Internal Revenue Code of 1986, as amended (hereinafter, the “Code”). In the event that such exemption is sought and until such time, if ever, as such exemption is denied or lost, the R Consortium shall not knowingly engage directly or indirectly in any activity that it believes would be likely to invalidate its status as an organization exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(6) of the Code. All references to the Code contained herein are deemed to include corresponding provisions of any future United States Internal Revenue Law.

ARTICLE II

MEMBERS

Section 2.1 Classes of Membership

The R Consortium shall have three classes of membership: Platinum Members, Silver Members, and Associate Members. In addition, the R Foundation, a non-profit public interest organization based in Vienna, Austria, shall be granted a permanent membership and be designated as the sole “R Foundation Member”.

Additional classes of voting and non-voting members may be created in the future, and the rights of existing classes of members may be amended, in each case pursuant to Section 2.9 of these By-laws. Platinum Members, Silver Members, the R Foundation Member and any future classes of members that are entitled to voting rights shall be collectively referred to as “Voting Members.” All Voting and non-voting memberships in the R Consortium are collectively referred to in these By-laws as “Memberships”, and a person or entity holding Membership is referred to in these By-laws as a “Member”.

Section 2.2 Conditions of Membership

Any association, partnership, organization, governmental agency, company, corporation, academic entity, or non-profit entity (or individual, solely with respect to Associate Members) interested in supporting the design, development, or application of the Environment shall be admitted to Membership upon: (a) acceptance of its written application on such form as may be from time to time required by the R Consortium (which acceptance shall be administered in a non-discriminatory fashion), (b) unless otherwise provided by the Board, payment of such application fees, assessments, initiation fees, annual dues or other fees for such class of Membership as may from time to time be established by the Board, if any (collectively, “Fees”). A Member shall remain in good standing as a Member provided such Member is in compliance with the terms and conditions of the R Consortium’s Certificate of Incorporation, By-laws, Membership Application and such rules and policies (and the terms of any agreements required thereby) as the Board and/or any committees thereof (each a “Board Committee”) may from time to time adopt, and is current in its fulfillment of all in-kind commitments and payment of all Fees and penalties for late payment as may be required or determined by the Board (such Fees and penalties are collectively referred to in the By-laws as “Financial Obligations”, and all of the foregoing good standing requirements are collectively referred to in these By-laws as “Membership Obligations”).

Section 2.3 Privileges of R Foundation Membership

While in good standing, the R Foundation Member shall be entitled to:

- (a) subject to the limitations of Section 4.3(a) of these By-laws, appoint up to three representatives to serve as members of the Board (each a “Director”), in accordance with such Section;
- (b) most prominent listing in all appropriate R Consortium marketing materials with Platinum Members;
- (c) in addition to the rights enumerated in this Section 2.3, all other rights enumerated or referred to in Section 2.5(b), (d) and (e) below, and such other rights as may be amended or created by the Board pursuant to its authority under Section 2.9 and Article XIV.

Section 2.4 Privileges of Platinum Membership

Each Platinum Member, while in good standing, shall be entitled to:

- (a) subject to the limitations of Section 4.3(b) of these By-laws, appoint one representative to serve as a member of the Board (a “Director”), in accordance with such Section;

(b) most prominent listing in all appropriate R Consortium marketing materials;

(c) appoint one voting representative to the Infrastructure Steering Committee (“ISC”) and each other Committee that may be established by the Board; and(d) in addition to the rights enumerated in this Section 2.4, to all other rights enumerated or referred to in Section 2.5(c), (e) and (f) below, and such other rights as may be amended or created by the Board pursuant to its authority under Section 2.9 and Article XIV.

Section 2.5 Privileges of Silver Membership

Each Silver Member, while in good standing, shall be entitled to:

- (a) nominate a representative to run for election as a Director and participate in the election of Directors in accordance with Section 4.3(3) of these By-laws;
- (b) together with the other Silver Members, elect a number of representatives to the ISC equal to the then-current number of Silver Directors, each to serve until the next annual election of Directors;
- (c) vote on each matter submitted to a vote of the Voting Members;
- (d) listing as a Member at the R Consortium web site and in other appropriate promotional materials;
- (e) display the R Consortium logo on such Member’s web site and in other appropriate materials to indicate membership in the R Consortium, subject to such guidelines relating to the R Consortium’s trademarks as may from time to time be in force; and
- (f) such other benefits, rights and privileges applicable to such Member’s Membership class as the Board may designate from time to time by vote pursuant to Section 2.9 and Article XIV below or under the General Corporation Law of Delaware.

Section 2.6 Privileges of Associate Membership

Each Associate Member (whether an individual or a separate non-profit), while in good standing, shall be entitled to such benefits, rights, and privileges as the Board may from time to time designate.

Section 2.7 Participation

Participation in any development Projects (as defined in Section 5.5(a) below) sponsored by the R Consortium shall not be limited to Members, but may be subject to such operating procedures and terms of participation and other rules as may from time to time be approved by the Board.

Section 2.8 Subsidiaries, Etc.

- (a) Only the legal entity which has been accepted as a Member of the R Consortium and its Subsidiaries (as defined below) shall be entitled to enjoy the rights and privileges of such Membership; provided, however, that such Member and its Subsidiaries shall be treated together as a single Member. For purposes of this Section, the term “Subsidiaries” shall mean all Related Companies (as defined below) that a Member controls or is affiliated with (as defined in Section 2.8(b) below).
- (b) Only one Member which is part of a group of Related Companies shall be entitled to have a representative on the Board at one time, subject to the exception that the ISC Director may serve while employed by a Related Company. For purposes of these By-laws, the term “Related Company” shall mean any entity which controls or is controlled by a Member or which, together with a Member, is under the common control of a third party, in each case where such control results from ownership, either directly or indirectly, of more than fifty percent of the voting securities or membership interests of the entity in question; and “Related Companies” are entities that are each a Related Company of a Member.
- (c) No Related Company of a Platinum Member may apply for Membership as a Platinum Member for so long as the existing Platinum Member retains its Membership.

(d) If a Member is itself a foundation, consortium, membership organization, user group or other entity that has members or sponsors, then the rights and privileges granted to such Member shall extend only to the employee-representatives of such Member, and not to its members or sponsors, unless otherwise approved by the Board in a specific case from time to time.

(e) Except as may be approved by the Board of Directors, Memberships shall be non-transferable, non-salable and non-assignable, except that any Member may transfer its current Membership benefits and obligations to a successor to substantially all of its business and/or assets, whether by merger, sale or otherwise; provided that the transferee agrees to be bound by these By-laws, the Certificate of Incorporation and such policies and procedures as the Board may from time to time adopt.

Section 2.9 Additional Classes of Members

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

Section 2.10 Termination or Suspension of Membership

Any Member may be suspended from Membership or have its Membership terminated by the Board for failure to satisfy its Membership Obligations or for engaging in any conduct, either within or without the R Consortium, that is contrary to the Purposes of the R Consortium. Financial Obligations already paid shall not be refundable upon any such termination or suspension, and all Financial Obligations of such Member which may be accrued and unpaid as of the date of such termination shall remain due and payable. Terminations or suspensions of Membership for failure to satisfy Financial Obligations within 90 days of invoice may be imposed with notice and without right of formal appeal under such procedures as the Board may from time to time approve. Except as provided in the last paragraph of this Section 2.10, no termination or suspension of Membership for any other purpose shall be effective unless:

(a) The Member is given notice of the proposed termination or suspension of Membership and of the reasons therefor;

(b) Such notice is delivered by electronic transmission to the email address of the Member's designated primary contact person shown on the R Consortium's records;

(c) Such notice is given at least thirty days prior to the effective date of the proposed termination or suspension of Membership; and

(d) Such notice sets forth a procedure determined by the Board (or other body authorized by the Board) to decide whether or not the proposed termination or suspension shall take place, whereby the Member is given the opportunity to be heard by such body, either orally (and represented by counsel if the Member so desires, at its sole cost and expense) or in writing, not less than five days before the effective date of the proposed termination or suspension.

(e) Such termination or suspension of Membership is approved by Super Majority Vote of the Board.

Notwithstanding the foregoing, in the event that the Board believes in good faith that a Member is engaging in willful misconduct or otherwise acting to the material detriment of the best interests of the R Consortium and its Members, the Board, acting by Super Majority Vote, may suspend such Member's Membership immediately, provided that such Member is otherwise afforded the protections provided for in subsections (a), (b) and (d) of this Section 2.10.

Section 2.11 Resignation by Member

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

Section 2.12 Levy of Dues, Assessments or Fees

The R Consortium may levy Fees upon its Members in such amounts as may be approved from time to time by the Board, provided, however, that no increase in annual Fees or new Fees will be effective prior to sixty (60) days following notice from the R Consortium. A Member upon learning of any increase in dues, or of any levy of any assessments or fees, may avoid liability therefor by resigning from Membership prior to the date such dues, assessments or fees are due and payable, except where the Member is, by contract with the R Consortium or otherwise, independently and explicitly liable for such dues, assessments or fees. No provision of the Certificate of Incorporation or By-Laws of the R Consortium authorizing such dues, assessments or fees shall, of itself, create such liability. In no event shall the failure of a Member to pay any dues or assessments give rise to any claim in favor of the R Consortium for indirect or consequential damages.

Section 2.13 Use of Names

Unless otherwise provided herein or pursuant to the terms of another agreement or as otherwise legally permitted, neither the R Consortium nor any Member shall use the name, logo, trademark, service mark or other distinctive mark of a Member in any form of publicity without the written permission of such Member, provided that the R Consortium and any Member may each disclose and publicize such Member's Membership in the R Consortium.

ARTICLE III

ACTIONS OF MEMBERS

Section 3.1 Action Without Meeting

Any action required or permitted to be taken by the Members, or any class of Members under the General Corporation Law of Delaware, or at any meeting of a Member Committee, Working Group thereof or other group of Members or subset of Members, may be taken without prior notice and without an in-person vote, if a consent in writing, setting forth the action to be taken, shall be signed by Members (or all members of a class of Members, as the case may be), making up not less than that percentage of all Members as would be necessary to authorize or take such action at a meeting at which all Members (or class of Members, as the case may be) entitled to vote thereon were present and voted, in accordance with the General Corporation Law of Delaware. Pursuant to such written consent, the Voting Members shall appoint or elect, as appropriate to its class of membership, a Board in accordance with Section 4.3 on an annual basis. Prompt electronic notice of the taking of any corporate action without a meeting by less than unanimous written consent shall be given to those otherwise entitled to vote thereon who have not consented in writing. An electronic transmission consenting to an action to be taken and transmitted by a Member or 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 R Consortium can determine (a) that the electronic transmission was transmitted by the Member or by a person or persons authorized to act for the Member and (b) the date on which such Member or authorized person or persons transmitted such electronic transmission. The date on which such electronic transmission is transmitted shall be deemed to be the date on which such consent was signed. Consents given by electronic transmission (i) may be delivered by electronic transmission to the principal place of business of the R Consortium or to an Officer or agent of the R Consortium having custody of the book in which actions of Members without a meeting are recorded, need not be reproduced in paper form, and may be maintained in electronic form as long as they are capable of being readily reproduced in paper form, and (ii) may be otherwise delivered to the principal place of business of the R Consortium or to an Officer or agent of the R Consortium having custody of the book in which actions of Members without a meeting are recorded if, to the extent and in the manner provided by resolution of the Board.

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

Section 3.2 Nomination and Election Procedures

Subject to the provisions of Section 4.3, the Board shall establish reasonable nomination and election procedures given the nature, size, and operations of the R Consortium, including a reasonable means for Members of appropriate classes to nominate a person for election as a Director, a reasonable opportunity for a nominee to communicate to the Members the nominee's qualifications and the reasons for the nominee's candidacy (if requested by such nominee), a reasonable

opportunity for all nominees to solicit votes (if requested by any such nominee), and a reasonable opportunity for all Members entitled to vote thereon to choose among the nominees.

ARTICLE IV

DIRECTORS

Section 4.1 Powers; Voting

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

Section 4.2 Number of Directors

Subject to Sections 4.3 and 4.4, the total number of Directors shall be at least one and not more than the number of Directors determined by application of the terms of Section 4.3, plus the individual elected by the Infrastructure Steering Committee to be a Director (the “ISC Director”).

Section 4.3 Nomination, Election and Term of Office of Directors

(a) The R Foundation Member (while remaining in good standing) shall be entitled individually to appoint up to three of Directors (each an “R Foundation Director”) determined as follows: one director if there are less than six (6) Platinum Members, two directors if there are six (6) to ten (10) Platinum Members, and three directors if there are eleven (11) or more Platinum Members. Each R Foundation Director shall serve until the next annual action of Members without a meeting and until his or her successor shall be duly appointed or until his or her earlier resignation or removal.

(b) Each Platinum Member (while remaining in good standing) shall be entitled individually to appoint one Director (each a “Platinum Director”). Each Platinum Director shall serve until the next annual action of Members without a meeting and until his or her successor shall be duly appointed or until his or her earlier resignation or removal.

(c) Each Silver Member (while remaining in good standing) shall have the right to vote, together with the other Silver Members as a class, to elect a number of Directors (each, a “Silver Director”) equal to the greater of one, or the number of Silver then in good standing divided by three (3) (rounded down to the nearest whole number). Silver Directors shall serve for a period of two years, except that at the time of any election of Silver Members, the Board shall assign terms of one year or two years to the successful nominees to the extent necessary such that as close to 50% of the terms of all Silver Directors will expire annually.

Each Silver Director shall serve in accordance with Section 4.3(h) below and until his or her successor is elected and qualified or until his or her earlier resignation or removal. The selection of nominees for such position(s) shall be performed under such nominating procedures as may be set by the Board from time to time.

(d) Any Director nominated, appointed or elected by any class of Members, or by any Member, may, but shall not automatically, be re-nominated, re-appointed and/or re-elected for additional terms.

(e) In the event of any increase in the number of Silver Members that results in a right of the Silver Members to an additional Board seat more than two months prior to the next annual election, then such additional Silver Director shall be nominated and elected pursuant to such nominating and election process as may be approved by the Board. Each such additional Silver Director so elected shall serve until the next annual action of Members without a meeting and until his or her successor shall be duly appointed or until his or her earlier resignation or removal.

(f) Each Director shall be an employee of the Member which nominated or appointed him or her, with the exception of (i) the ISC Director who may or may not be an employee of a Member and (ii) any R Foundation Director, who shall be an Ordinary Member of the R Foundation. Each Director (other than the ISC Director) shall hold office until the earliest to occur of the expiration of the term for which such Director was appointed or elected and such Director’s successor is

appointed or elected (as the case may be) and qualified, or until his or her earlier death, resignation or removal, and additionally, in the case of a Platinum or Silver Director, until the earlier of

(i) the expiration or termination of Membership of the Member that nominated or appointed such Director, (ii) the combination, by merger, acquisition or otherwise, of two Members that each have representatives on the Board, upon which event one of the two representatives, as designated by the surviving Member, shall be deemed to have resigned, or (iii) if requested by the Board or the employer of such Director, upon the termination of the employment of such Director by the Member represented by such Director. In addition, during such times as the Membership of any Member that has a representative serving as a Director is suspended pursuant to Section 2.10 above, the attendance and voting rights of such Director representative shall also be suspended until such time, if ever, as the suspension of such Member is lifted.

(g) Each R Foundation, Platinum or Silver Director (or the Member that appointed or nominated such Director) or the ISC Director may designate in writing (which designation may be withdrawn in writing at any time by such Director or Member) an individual to act as a Director in his or her stead, whether for a single meeting or as a standing alternate. Any such alternate Director shall also be an employee of the Member that appointed or nominated the original Director. Any such alternate Director shall be entitled to (i) attend and vote at all meetings which the designating Director does not attend, (ii) sign all written consents in lieu of the designating Director, and (iii) otherwise exercise the duties and enjoy the privileges of the designating Director in the absence or unavailability of the designating Director; provided, however, that no such alternate Director may propose a vote or vote upon any Committee of the Board.

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

(i) At any time that R Consortium has an Executive Director, the Board of Directors, acting as a separate class of members solely for such purpose, may but shall not be required, to elect such individual to serve as a Director, either at the pleasure of the Board of Directors or for a specified term.

Section 4.4 Enlargement or Reduction

Subject to Section 2.8 above and Section 4.10 below, the number of Directors, the persons eligible to become Directors and the classes of Members eligible to appoint, elect and/or nominate Directors may be amended at any time by a Super Majority Vote (as defined in Section 4.10(b)) of the Board.

Section 4.5 Resignation and Removal

Any Director may resign at any time upon notice to the R Consortium in writing or by electronic transmission at the principal place of business of the R Consortium or to the Chairperson or Secretary. Such resignation shall be effective upon receipt unless it is specified to be effective at some other time or upon the happening of some other event. Any Director who was appointed by a Member under Section 4.3(a or b) may be removed by that Member at any time, and for any reason, or for no reason. Any or all of the Directors who were elected by a class of Members voting as a class or by the Board may be removed by a majority vote of such class of Members or the Board, respectively. Unless otherwise specified by law or the Certificate of Incorporation, any Director may be removed by a majority of the other Directors then in office for engaging in any conduct, either within or without the R Consortium, that is contrary to the interests of the R Consortium or to the advancement of the R Consortium's

business or industry goals; provided, however, that the Member or class of Members or, in the case of the ISC Director, the Infrastructure Steering Committee, that appointed and elected or nominated and elected (as the case may be) such removed Director shall be entitled to appoint and elect or nominate and elect (as the case may be) a replacement for such removed Director to serve for the balance of such removed Director's term.

Section 4.6 Vacancies

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

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

Section 4.7 Place of Meetings

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

Section 4.8 Regular Meetings

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

Section 4.9 Special Meetings

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

Section 4.10 Quorum, Action at Meeting, Adjournments

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

(b) In order to pass a "Super Majority Vote", a resolution must be taken at a meeting of the Board at which a quorum is present and in support of which two-thirds of the Directors present and participating (whether in person, by proxy or otherwise) have voted affirmatively, or by an equivalent number of Directors acting by written consent in the manner described in Section 4.11 below. A Super Majority Vote of the Board shall be required with respect to the following matters:

- (i) Amending the Certificate of Incorporation;
- (ii) Adopting or recommending to the Members an agreement of merger or consolidation;
- (iii) Approving or recommending to the Members the sale, lease or exchange of all or substantially all of the R Consortium's property and assets;

(iv) Approving or recommending to the Members the dissolution, liquidation or winding up of the R Consortium or a revocation of any such dissolution, liquidation or winding up;

(v) Enlarging or reducing the size of the Board (other than as contemplated by Section 4.3 in connection with increases and decreases in numbers of Members of specific classes of Membership);

(vi) Amending or modifying the eligibility requirements for membership on the Board, the classes of Members eligible to appoint and/or elect Directors, or the number of Directors that a given class of Members is entitled to appoint or elect;

(vii) Termination or suspension of a Member's membership, pursuant to Section 2.10 above;

(viii) Elimination of the R Foundation Member right set forth in Section 2.3(c) above;

(ix) Any change to the rights of Membership enumerated in Sections 2.3 – 2.5 above; and

(x) Adopting or modifying any policy relating to intellectual property.

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

Section 4.11 Action by Consent

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

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

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

(iii) two or more such Directors have not objected to the taking of any such action by written notice delivered to the R Consortium within ten (10) business days following the date that written notice of the Directors action is mailed or otherwise delivered to such Directors.

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

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

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

Section 4.12 Telephonic Meetings

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

Section 4.13 Inspection Rights

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

Section 4.14 Fees and Compensation

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

ARTICLE V

EXECUTIVE COMMITTEE AND OTHER COMMITTEES

Section 5.1 Executive Committee

The Board may (but shall not be required), by resolution adopted by a majority of the Directors then in office (provided a quorum is present), create an Executive Committee, consisting of one or more Directors. The Board may designate one or more Directors as alternate members of such Executive Committee, who may replace any absent member at any meeting of such Executive Committee. The Executive Committee, subject to any limitations imposed by the Certificate of Incorporation, these By-laws, statute and/or resolution adopted by the Board, shall have and may exercise all of the powers of the Board which are delegated to the Executive Committee from time to time by the Board; provided, however, that the Executive Committee shall have no authority with respect to:

- (a) Approving any action which requires approval of the Voting Members;
- (b) Filling vacancies on the Board;
- (c) Fixing compensation of the Directors, Executive Director, and other employees for serving on the Board or on any Board Committee;
- (d) Amending or repealing the By-laws or adopting new By-laws;
- (e) Amending or repealing any policy adopted by the Board;
- (f) Amending or repealing any resolution of the Board which by its express terms is not so amendable or repealable;
- (g) Amending the Certificate of Incorporation;
- (h) Adopting an agreement of merger or consolidation;

- (i) Recommending to the Members the sale, lease or exchange of all or substantially all of the R Consortium's property and assets;
- (j) Recommending to the Members a dissolution of the R Consortium or a revocation of a dissolution; and
- (k) Taking any other action for which a vote of more than a simple majority of the Board is required by these By-laws, the Certificate of Incorporation, or law.

Section 5.2 Other Committees of the Board

The Board may, by resolution adopted by a majority of the Directors then in office (provided a quorum is present), create such nominating, audit, compensation and other Board Committees, each consisting of one or more Directors appointed by the Board, as the Board may from time to time deem advisable, to perform such general or special duties as may from time to time be delegated to any such Board Committees by the Board, subject to the limitations imposed by the Certificate of Incorporation or by these By-laws. No Committee shall have the power or authority to take any action prohibited by Section 5.1 above to be taken by the Executive Committee. The Board may designate one or more Directors as alternate members of any Board Committees, who may replace any absent member at any meeting of such Board Committees. Any such Board Committee or Board Committees shall have such powers, duties and name or names as may be determined from time to time by resolution adopted by the Board. Each Board Committee shall keep regular minutes of its meetings and make such reports to the Board as the Board may request.

Section 5.3 Meetings of Committees of the Board

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

Section 5.4 Term of Office of Members of Committees of the Board

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

Section 5.5 Committees of the Members

- (a) From time to time, the Board may establish Member Committees in addition to the Infrastructure Steering Committee (as described in the paragraph (b) below). Membership attendance and voting rights in all Member Committees shall be as specified in Article II. Unless otherwise specified in these By-laws or by the Board, each Member Committee may have such sub-committees, working groups and special interest groups as from time to time may be approved by such Member Committee, within the strategic direction established by the Board (each a "Working Group").
- (b) An Infrastructure Steering Committee shall be established to address Environment user out-reach efforts and infrastructure requirements, consisting of (i) a project lead from each top level Project, (ii) the Platinum Member representatives, and (iii) the representative(s) elected by the Silver Members. The operation of the Infrastructure Steering Committee shall be governed by the rules of process of such Committee as from time to time approved by the Board. The Infrastructure Steering Committee shall elect a Chair and an ISC Director (as defined in Section 4.2. The Chair and ISC Director may be (but are not required to be) the same person. The Infrastructure Steering Committee shall be under the leadership of the Chair, with the advice and consent of the Board, who shall serve at the pleasure of the Infrastructure Steering Committee and the Board. Each of the Infrastructure Steering Committee Chair and ISC Director shall be elected annually with no term limits. The Infrastructure Steering Committee shall approve the creation of an organization of technical and infrastructure collaboration initiatives, "Projects", under a process to be defined by the Infrastructure Steering Committee.
- (c) At the discretion of the Board of Directors, a Marketing Committee may be established to promote the mission of and activities of the R Consortium, consisting of authorized representatives of Members and ISC Projects. The Marketing

Committee shall elect as a Chair a Board-approved candidate and shall be governed by such rules of process as may from time to time be approved by the Board. The Chair shall preside over meetings of the Marketing Committee with the advice and consent and at the pleasure of the Board. A Chair shall serve for a term of one year and may be reelected to one or more additional terms.

(d) At the discretion of the Board of Directors, a Membership Committee may be established to promote membership in the R Consortium, consisting of authorized representatives of Members and ISC Projects. The Membership Committee shall elect as a Chair a Board-approved candidate and shall be governed by such rules of process as may from time to time approved by the Board.. The Chair shall preside over meetings of the Membership Committee with the advice and consent and at the pleasure of the Board. A Chair shall serve for a term of one year and may be reelected to one or more additional terms.

(e) At the discretion of the Board of Directors, a Grants Committee may be established to (i) advise the Board of Directors on appropriate grant guidelines, priorities and procedures and (ii) administer the grants program, including the review, approval, and monitoring of grants. The Grants Committee shall elect as a Chair a Board-approved candidate and shall be governed by such rules of process as may from time to time approved by the Board. The Chair shall preside over meetings of the Grants Committee with the advice and consent and at the pleasure of the Board. A Chair shall serve for a term of one year and may be reelected to one or more additional terms.

(f) At the discretion of the Board of Directors, a Finance Committee may be established to advise the Board on financial and budgetary matters, consisting of Board members and of Member representatives approved by the Board. The Finance Committee shall have a Chair who shall be a Director appointed by the Board, and shall be governed by such rules of process as may from time to time approved by the Board. The Chair shall preside over meetings of the Finance Committee with the advice and consent and at the pleasure of the Board.

ARTICLE VI

OFFICERS

Section 6.1 Officers

The Officers of the R Consortium shall be a Chairperson, a Treasurer and a Secretary, each of whom shall also be a Director. The R Consortium may also have, at the discretion of the Board, an Executive Director, one or more Vice- Chairpersons, one or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers (which may or may not be Directors, as so specified by a vote of the Board) with such titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3.

Section 6.2 Vacancies

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

Section 6.3 Election

The Board at its annual meeting each year shall choose a Secretary and a Treasurer, and every two years a Chairperson and a Vice-Chairperson. The R Consortium may also have, at the discretion of the Board, an Executive Director, one or more Assistant Secretaries and/or Assistant Treasurers, and such other Officers (which may or may not be Directors, as so specified by a vote of the Board) with such titles, terms of office and duties as may be elected in accordance with the provisions of Section 6.3.

Section 6.4 Tenure

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

upon the happening of some other event.

Section 6.5 Chairperson and Executive Director

(a) The Chairperson shall have all of the powers normally associated with the role of chief executive officer and preside at all meetings of the Board and the Members. The Chairperson shall oversee the management of the business of the R Consortium and see that all orders and resolutions of the Board are carried into effect. Without limiting the foregoing, the Chairperson shall:

(i) Execute bonds, mortgages, and other contracts requiring a seal, under the seal of the R Consortium, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board to some other Officer or agent of the R Consortium; and

(ii) Oversee the Executive Director (if any).

(b) The Executive Director (if any) shall preside over the day-to-day affairs of the R Consortium under the direction of the Board and the Chairperson and perform such other duties and have such other powers as the Board or the Chairperson may from time to time prescribe.

(c) In the absence of the Chairperson, or in the event of the inability or refusal of the Chairperson to act, the Vice-Chairperson shall perform the duties of the Chairperson, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairperson. In the absence of the Chairperson or Vice-Chairperson, or in the event of the inability or refusal of either to act, the Secretary, or if unavailable, the Treasurer, shall perform the duties of the Chairperson, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Chairperson.

Section 6.6 Secretary

The Secretary shall have such powers and perform such duties as are incident to the office of Secretary under the General Corporation Law of Delaware, including without limitation a recording all the proceedings of the meetings of the R Consortium and of the Board. The Secretary, and each Assistant Secretary, shall have authority to affix the Corporate seal to any instrument requiring it and when so affixed, it may be attested by signature of the Secretary or by the signature of such Assistant Secretary. The Board may give general authority to any other Officer to affix the seal of the R Consortium and to attest the affixing by such Officer's signature.

Section 6.7 Assistant Secretaries

Any Assistant Secretary shall, in the absence of the Secretary or in the event of his or her inability or refusal to act, perform the duties and exercise the powers of the Secretary. In the absence of the Secretary or any Assistant Secretary at any meeting of Directors, the person presiding at the meeting shall designate a temporary or acting Secretary to keep a record of the meeting.

Section 6.8 Treasurer

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

ARTICLE VII

NOTICES

Section 7.1 Delivery

(a) Whenever, under the provisions of law, or of the Certificate of Incorporation or these By-laws, written notice is required to be given to any Director or Member, such notice may be given by mail, addressed to such Director or Member, at his, her or its address as it appears on the records of the R Consortium, with postage thereon prepaid. Unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, and subject to the provisions below relating to notice by electronic transmission to Members, written notice may also be given by electronic mail, telecopy, commercial delivery service, or similar means, addressed to such Director or Member at his, her or its physical, email, or telecopy address or number as it appears on the records of the R Consortium. Without limiting the manner by which notice otherwise may be given effectively to Members, any notice to Members given by the R Consortium under any provision of law, the Certificate of Incorporation, or the By-laws, unless written notice by mail is required by law, the Certificate of Incorporation or another provision of these By-laws, shall be effective if given by a form of electronic transmission consented to by the Member to whom the notice is given.

(b) Notice given pursuant to this Section shall be deemed given: (i) if by facsimile telecommunication (A) to a Member, when directed to a number at which the Member has consented to receive notice and (B) to a Director, when directed to the number for such Director as it appears on the records of the R Consortium; (ii) if by electronic mail to (A) a Member, when directed to an electronic mail address at which the Member has consented to receive notice and (B) to a Director, when directed to the electronic mail address for such Director as it appears on the

records of the R Consortium; (iii) if by a posting on an electronic network together with separate notice to the Member or Director of such specific posting, upon the later of (A) such posting and (B) the giving of such separate notice; (iv) if by any other form of electronic transmission, when directed to the Member or Director; (v) if by in- hand delivery or oral notice, at the time it is actually given; (vi) if by mail, at the time when the same shall be deposited in the United States mail; and (vii) if by commercial delivery carrier or similar means, at the time when the same shall be deposited with the carrier, in each case the transmission charge to be paid by the R Consortium or the person sending such notice and not by the addressee. An affidavit of the Secretary or an Assistant Secretary or of the transfer agent or other agent of the R Consortium that the notice has been given by a form of electronic transmission shall, in the absence of fraud, be prima facie evidence of the facts stated therein.

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

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

Section 7.2 Waiver of Notice

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

ARTICLE VIII

INDEMNIFICATION

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

Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, the R Consortium shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the R Consortium) by reason of the fact that he or she is or was a Director, Officer, employee or agent of the R Consortium, or is or was serving at the request of the R Consortium as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys’ fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him or her in connection with such action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the R Consortium, and, with respect to any criminal action or proceedings, had no reasonable cause to believe this conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the R Consortium, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

Section 8.2 Actions by or in the Right of the R Consortium

Subject to confirmation of the appropriateness of such action by the Board as provided in Section 8.4 below, the R Consortium shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the R Consortium to procure a judgment in its favor by reason of the fact that he or she is or was a Director, Officer, employee or agent of the R Consortium, or is or was

serving at the request of the R Consortium as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him or her in connection with the defense or settlement of such action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the R Consortium; provided, however, that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable unless, and only to the extent that, the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery of the State of Delaware or such other court shall deem proper.

Section 8.3 Success on the Merits

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

Section 8.4 Specific Authorization

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

Section 8.5 Advance Payment

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

Section 8.6 Non-Exclusivity

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

Section 8.7 Jurisdiction of Delaware Court of Chancery

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

Section 8.8 Insurance

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

Section 8.9 Continuation of Indemnification and Advancement of Expenses

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

Section 8.10 Severability

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

Section 8.11 Intent of Article

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

ARTICLE IX

BOOKS AND RECORDS

Section 9.1 Books and Records

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

Section 9.2 Form of Records

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

Section 9.3 Reports to Directors, Members and Others

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

Section 9.4 Record Date

In order that the R Consortium may determine the Members entitled to express consent to corporate action in writing without a meeting, or the Members entitled to receive payment of any distribution, if any, permitted by law and the R Consortium's then current federal and state tax status, or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of Membership or for the purpose of any other lawful action, the Board may fix, in advance, a record date, which shall not be (i) more than sixty (60) days prior to the adoption of the resolution by the Board and (in the case of consent to corporate action in writing without a meeting) the date upon which such written consent is delivered to the Members, nor (ii) later than the date upon which the Board adopts the resolution proposing the taking of such action. In the absence of such a determination, the record date shall be at the close of business on the day on which the Board adopts the resolution proposing the taking of such action.

Section 9.5 Registered Members

The R Consortium shall be entitled to recognize the exclusive right of a person registered on its books as a Member or a representative of a Member to receive distributions, if any, and to vote, if such records indicate that such person is a Voting Member or a representative of a Voting Member, and to hold liable for Financial Obligations each

Member registered on its books, and shall not be bound to recognize any equitable or other claim to or interest in Membership on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware General Corporation Law.

ARTICLE X

CERTAIN TRANSACTIONS

Section 10.1 Transactions with Interested Parties

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

- (a) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Board or such Board Committee, and the Board or such Board Committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested Directors, even though the disinterested Directors be less than a quorum; or
- (b) The material facts as to his or her relationship or interest and as to the contract or transaction are disclosed or are known to the Voting Members entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the Voting Members; or
- (c) The contract or transaction is fair as to the R Consortium as of the time it is authorized, approved or ratified, by the Board, a Board Committee, or the Voting Members.

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

ARTICLE XI

GRANTS, CONTRACTS, LOANS, ETC.

Section 11.1 Grants

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

Section 11.2 Execution of Contracts

The Board may authorize any Officer, employee or agent of the R Consortium, in the name and on behalf of the R Consortium, to enter into any contract or execute and satisfy any instrument, and any such authority may be general or confined to specific instances, or otherwise limited. In the absence of any action by the Board to the contrary, the Chairperson shall be authorized to execute such contracts and instruments on behalf of the R Consortium as he or she may deem to be reasonably necessary, subject to such standing limits as may from time to time have been established by vote of the Board, but must inform the Board of any such actions.

Section 11.3 Checks, Drafts, Etc.

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

Section 11.4 Deposits

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

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Fiscal Year

The R Consortium fiscal year shall end on the 31st day of December in each year. The fiscal year of the R Consortium may be changed by resolution of the Board.

Section 12.2 Reserves

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

Section 12.3 Seal

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

Section 12.4 Proprietary Rights

- (a) Except as specifically provided to the contrary in such policies and procedures as may from time to time be approved by the Board, all information disclosed by any participant during any official meeting or activity of the R Consortium, including but not limited to Member meetings, Member Committee Meetings, R Consortium meetings, Board meetings, meetings of Board Committees and sub-committees thereof, electronic mail or the like, shall be deemed to have been disclosed on a non-confidential basis, but without waiver of any rights represented by valid patents, patent applications, and Federal and international statutory copyrights.
- (b) No express or implied right, whether by implication, estoppel, or otherwise, to any patent, copyright, trademark, trade secret, or other intellectual property right of any Member is or shall be deemed to be granted to the R Consortium or to any other Member by reason of its membership in or participation in the activities of the R Consortium, except as may be provided in a separate written agreement.
- (c) No Member shall at any time be required to exchange proprietary information with any other Member solely by reason of its being a Member of the R Consortium.

ARTICLE XIII

ANTITRUST COMPLIANCE

Section 13.1 General

The R Consortium will conduct all of its activities in conformance with all international, U.S. federal and state antitrust laws and competition laws, including but not limited to the Sherman Act, the Clayton Act, the Robinson- Patman Act, the Federal Trade Commission Act and the EU Competition Regulations. The Board and the Chairperson shall consult legal counsel and seek legal review whenever necessary to insure that the activities of the R Consortium are conducted in conformance with such laws.

Each of the Members of the R Consortium is committed to fostering competition in the development of new products and services, and the activities of the R Consortium are intended to promote such competition. Each Member acknowledges that it may compete with other Members in various lines of business and that it is therefore imperative that they and their representatives act in a manner that does not violate any applicable state, federal or international antitrust laws or regulations. Without limiting the generality of the foregoing, Members that are competitors shall not discuss issues relating to product costs, product pricing, methods or channels of product distribution, any division of markets, or allocation of customers, or any other topic that would be prohibited by applicable antitrust laws.

Each Member shall assume 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 R Consortium, whether or not such discussions take place during formal meetings, informal gatherings, or otherwise.

Section 13.2 Availability of Intellectual Property

It is the good faith objective of the R Consortium (a) to make all intellectual property available as soon as its development by the R Consortium is complete on the same terms to all Members who have not participated in the development or determination of such intellectual property as well as to all those Members who have participated, (b) to make all such intellectual property available at the same point in time to all Members, and (c) to make all such intellectual property available to all non-Members on the same fair and reasonable terms and conditions.

Section 13.3 No Obligation to Endorse

No Member shall, by reason of its Membership or participation in the R Consortium or otherwise, be obligated to license from the R Consortium, use or endorse any intellectual property developed or endorsed by the R Consortium, or to conform any of its products to any Environment developed or adopted by the R Consortium, nor shall any such Member be precluded from independently licensing, using or endorsing similar intellectual property, platform, software, specifications or documentation developed by it or by others. No provision of these Bylaws or any Membership Agreement shall be interpreted to prevent any Member from using a programming language or environment other than the Environment, or from engaging in other activities or business ventures, independently or with others, whether or not competitive with the activities contemplated herein or those of any Member.

ARTICLE XIV

AMENDMENTS

Except where such power is expressly limited by law, the Certificate of Incorporation or these By-laws as to any specific action, these By-laws may be altered, amended or repealed, and new By-laws may be adopted, in each case by an affirmative vote of a two-thirds majority of all then serving members of the Board.