

**BY-LAWS
OF THE
TRAINING AND SIMULATION TECHNOLOGY CONSORTIUM, INC.
(d/b/a NATIONAL CENTER FOR SIMULATION)**

**ARTICLE I
PURPOSES**

The Corporation is organized exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (or the corresponding provision of any future United States Internal Revenue Law), for such purposes:

- (a) To operate the National Center for Simulation (NCS) in accordance with the approved vision and goals;
- (b) To provide a vehicle for the dissemination of information about learning technologies and simulation, including available and developing hardware and computer software, to the public and private educational and training communities at all levels;
- (c) To provide a forum for the gathering of information about educational techniques utilizing new discoveries and new methods of training and education;
- (d) To provide assistance in utilizing new methods of learning for the educational community at large;
- (e) To serve as a repository of technologies developed in the public and private sectors to assist in the learning process;
- (f) To encourage the utilization and exploitation of new technologies in the presentation of materials by the educational and training communities;
- (g) To engage in research with respect to the blending of technologies and the development of new technologies to improve the learning process;
- (h) To facilitate dual use and transfer of technology products and systems to commercial markets through any means including undertaking of contract work;
- (i) RESERVED;
- (j) To receive gifts and grants and make distributions thereof for the purposes and activities that qualify as exempt under section 501(c)(3) of the Internal Revenue Code of 1986 as amended, or the corresponding provisions of any future federal tax laws; and;
- (k) To grant scholarships to high school, community college, and college/university students pursuing education in and a career related to simulation or digital media.

ARTICLE II
MEMBERS

2.0 Members of the Corporation shall consist of modeling and simulation related organizations and individuals admitted in accordance with qualifications and procedures established by the Board of Directors. Representatives from Government organizations will function as liaison in accordance with a memorandum of understanding or other agreement.

2.1 Members. Each Member shall be accepted for membership on terms and conditions approved by the Board of Directors. Membership shall include four classes as defined below with voting rights as defined by Section 2.4:

- 2.1.1 Business. Any legal for-profit commercial organization of any size
- 2.1.2 Ex-Officio. Academic, not-for profit, or reciprocal organization
- 2.1.3 Associate. Individual, practitioner, or other non-member (such as volunteer)
- 2.1.4 Student. An individual enrolled in a public or private education program.

2.2 Special Member Status. There may be special member status specified by required statute, condition, or mutual benefit agreed to and between NCS and the unique member. Special member status will be as to either permanent member or ex-officio but in both instances full voting privileges will convey to the special member.

2.3 Affiliates. Non-member organizations shall provide such in-kind contributions or fees as shall be approved by the Board of Directors, and shall be accepted for recognition as affiliates on terms and conditions approved by the Board of Directors.

2.4 Voting Rights. Members shall have full voting rights with one vote only permitted to each Member Organization except that Ex-Officio (unless specifically permitted by bilateral agreement), Associates, Students, and Affiliates are not entitled to vote.

2.5 Associates. Representatives from non-member modeling and simulation related organizations may provide a non-voting liaison in accordance with the terms and conditions of a memorandum of understanding or other agreement entered into with the Corporation pursuant to P.L. 102-484 4 221, 106 Stat. 2315, 2678 (to be codified at 10 U.S.C.2511) and such other appropriate instruments as determined by the organization and the Board of Directors.

2.6 Designation of Persons to Act on Behalf of Members. Each Member shall, upon joining the Corporation and at or prior to each Annual Meeting, designate in writing to the Corporation the name and title of the individual authorized to act for the Member in casting votes.

2.7 Termination or Suspension of Membership. Provided a quorum of the Board of Directors is present, the Board of Directors may, by a vote of two-thirds of those present, expel a Member of the Corporation if the Member breaches any duty or obligation under these By-Laws or any agreement with the Corporation or if, in the judgment of the Board of Directors, the best interests of the Corporation would otherwise be served thereby. The Board of Directors shall set forth in writing the reason(s) for any such decision to expel a Member. Any Member proposed to be expelled shall be entitled to written notice, specifying the grounds for such expulsion, given at

least thirty (30) days prior to the meeting at which such expulsion is to be voted upon, and shall be entitled to appear before and be heard at such meeting. Any Member who is in arrears in excess of sixty (60) days after notice thereof by the Corporation in the payment of dues or other contributions owing to the Corporation, may be suspended by the Board of Directors and placed on the inactive list by the Secretary until payment is received. Suspended Members shall not be entitled to any of the rights of Membership. Any termination of membership shall be duly recorded in the Corporation's minute book.

ARTICLE III
MEETINGS OF MEMBERS

3.1 Annual Meeting. An annual meeting of the Members of the Corporation may be held on a day of each year selected by the Board of Directors, for the election of Board Members and the transaction of such other Corporation business as may come before the meeting.

3.2 Special Meeting. Special meetings of Members may be called at any time, for any purpose or purposes, by the President, the Chairman of the Board, or by any three Members of the Board of Directors.

3.3 Place of Holding Meetings. The Board of Directors may designate any place, either within or without the state of Florida, as the place for any meeting called by the Corporation. If no designation is made, then the meeting shall be at the site of the Corporation's principal office.

3.4 Notice of Meetings. Written or printed notices of the date, time and place of each meeting of the Members shall be given by the Secretary, Secretary's designee, or Assistant Secretary, either personally, by mail, telephone, electronic mail, courier or facsimile transmission to each Member, at least five (5) days, but not more than forty (40) days, before the day of any meeting. Notice shall be deemed given to a Member when it is mailed, postage prepaid by the Secretary or Secretary's designee, or Assistant Secretary, to such Member's address, as shown upon the books of the Corporation, when it is personally delivered to such Member or left at such Member's residence or usual place of business, or when delivered by telephone, electronic mail, courier or facsimile transmission to the Member.

3.5 Quorum. The presence in person or by proxy of a majority of the Members of the Corporation entitled to vote thereat shall constitute a quorum at all meetings of the Members, except as otherwise provided by law, by the Articles of Incorporation or by these By-Laws. If less than a quorum shall be in attendance at the time for which the meeting shall have been called, the meeting may be adjourned to another date by a majority of the voting Members present or represented by written proxy.

3.6 Conduct of Meeting. Meetings of Members shall be presided over by the Chairman of the Board of the Corporation, or if not present, by the Vice Chairman, or if not present, the President of the Corporation, or if none of said persons is present, by a temporary chairman elected by those in attendance at the meeting. The Secretary of the Corporation shall act as secretary of such meetings. In the absence of the Secretary, the Assistant Secretary shall act. If neither the Secretary nor the Assistant Secretary is present, the presiding officer may appoint a person to act as secretary of the meeting.

3.7 Voting Procedures. At any meeting of Members, every Member entitled to vote shall have one (1) vote.

3.8 Proxies. Such vote may be either in person or by proxy appointed by an instrument in writing subscribed by such Member of his or her duly authorized agent, bearing a date not more

than thirty (30) days prior to said meeting. Such proxy shall be dated, but is not required to be sealed, witnessed, or acknowledged.

3.9 Vote by Mail. Notwithstanding anything to the contrary herein, so long as notice is given to all Members as required by these By-Laws, Members shall be entitled to vote by mail or by electronic mail on the election and approval of directors.

3.10 Informal Action of the Members. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if a written consent setting forth such action is signed and dated by Members entitled to vote on the matter and having not less than the minimum number of votes necessary to authorize such action and one more such consents is delivered to the Corporation at its principal office within sixty (60) days of the date of the earliest dated consent. This written consent must be filed with the records of the Members' meetings. Within ten (10) days after obtaining such authorization by written consent, notice must be given to those Members who are entitled to vote on the action but who have not consented in writing, which notice must fairly summarize the material features of the action taken.

ARTICLE IV
BOARD OF DIRECTORS AND COMMITTEES

4.1 General Powers. All corporate powers of the Corporation shall be exercised by, or under the authority of, the Board of Directors. The property and business of the Corporation shall also be managed under the direction of the Board of Directors, subject to any limitation set forth in the Articles of Incorporation.

4.2 Number. There shall be a minimum of nine (9) Directors and a maximum as determined by the Board of Directors.

4.3 Election of Directors.

(a) Each Member shall be entitled to vote for the elected Board of Directors.

(b) The President of the Corporation shall be the Executive Director of the Corporation, but shall not be a member of the Board of Directors.

(c) The Board of Directors by majority vote may appoint directors who represent a particular region, industry, technical specialty, or special interest member that supports the NCS mission and objectives. Appointed directors may designate an alternate to represent them in their absence. Disassociation of the appointed director with a Member shall require replacement of that director.

(d) The Board of Directors shall establish criteria for nominations for the Board of Directors elections prior to the nomination process.

4.4 Term of Office. Directors shall normally serve three year terms or until their earlier resignation, death or removal from office. Disassociation of the elected director with a Member shall immediately conclude that director's term. If the Member that a director represents is no longer a member in good standing, the director's term will immediately be concluded.

4.5 Filling of Vacancies. In the case of any vacancy in the Board of Directors through death, resignation, disqualification or removal of a director, a replacement will be selected through a special vote of the Members, the replacement to hold office for the unexpired portion of the term of the director whose place shall be vacant.

4.6 Removal. Any elected director may be removed from office with or without cause by the affirmative vote in writing of a majority of the Members entitled to elect and approve directors, wherever in the best judgment of the Members entitled to elect and approve such directors, the best interests of the Corporation would be served thereby.

4.7 Absences. The Board of Directors is authorized to remove any Board Member who misses two (2) consecutive Board of Directors meetings, unless excused by the Chairman, in a given twelve (12) month period.

4.8 Compensation of Directors. Directors shall not receive any salary for their services as such, but each director may, if authorized in writing by the Board of Directors, be entitled to receive from the Corporation reimbursement of the expenses incurred by him or her in attending any regular or special meeting of the Board of Directors. Nothing herein contained shall be

construed to preclude any director from serving the Corporation in any other capacity and receiving compensation therefrom.

4.9 Chairman and Vice Chairman. The Board of Directors shall elect from among its members a Chairman and Vice Chairman of the Board, who shall serve at the pleasure of the Board. The Chairman, or in his or her absence, the Vice Chairman, shall preside over meetings of the Members and the Board of Directors and shall do and perform such other duties as may from time to time be assigned by the Board of Directors. In the absence of the Chairman or, in the event of any inability or refusal to act, the Vice-Chairman shall perform the duties of the Chairman. The Chairman shall serve as a voting member of all Committees of the Corporation. The Chairman shall serve as the Chairman of the Executive Committee.

4.10 Committees.

(a) Board Committees. The Board of Directors may designate from among its members one or more committees of the Board, each of which, to the extent provided in the resolution, shall have and may exercise the authority of the Board of Directors. However, no committee shall have the power to: recommend to the Members any action which requires Member approval; adopt, amend or repeal the By-Laws; approve any merger; determine the number of directors on the Board of Directors; fill any vacancies on the Board of Directors or on any Board Committee; or take any other action reserved to the Board of Directors by law, the Articles of incorporation or these By-Laws. Such committee or committees shall have such names as may be determined from time to time by resolution adopted by the Board of Directors. Each such Board Committee must have two or more members who serve at the pleasure of the Board of Directors. The Board may designate one or more directors as alternate members of any such committees who may act in the place and stead of any absent member or members at any meeting of such committee.

(b) Non-Board Committees. There may be an Advisory Committee to the Board of Directors, as described below, and the Board of Directors may also appoint such other committees as it deems necessary or desirable, which shall not have or exercise the authority of the Board of Directors and whose members need not be directors of the Corporation

(c) Advisory Committee. The Board of Directors may appoint an Advisory Committee to advise the President and the Board of Directors regarding technology, membership and other matters, as deemed appropriate. The Committee shall review future projects, technological goals, recommend priorities for the Corporation and take on any other tasks assigned by the Board of Directors. The Advisory Committee shall be composed of a cross section of members as determined by the Board of Directors.

(d) National Advisory Committee. The Board of Directors from time to time shall appoint a National Advisory Committee, consisting of selected individuals who are interested in the success of the Corporation. The Board of Directors shall name a Chairman and as many Members as deemed appropriate. The National Advisory Committee shall meet with the Board of Directors at such times and locations designated by the Board of Directors and shall take on tasks as directed by the Board of Directors.

ARTICLE V
BOARD AND COMMITTEE PROCEDURES

5.1 Annual Meeting of the Board. The annual meeting of the Board of Directors shall be held immediately following the annual Members' meeting, or if no annual Members' meeting is held, on a day of each year selected by the Board of Directors, for the purpose of electing directors and officers whose terms shall have expired as of the date of such annual meeting, and for the transaction of such other Corporation business as may come before the meeting.

5.2 Regular Meetings of the Board and Committees. Regular meetings of the Board of Directors and any committees may be held without notice at such time and place as shall from time to time be determined by resolution of the Board or committee, as the case may be, provided that notice of every resolution of the Board or committee fixing or changing the time or place for the holding of regular meetings of the Board or such committee shall be given to each director or committee member, as the case may be, at least five (5) days before the first meeting held pursuant thereto.

5.3 Special Meetings of the Board and Committees. Special meetings of the Board of Directors shall be held whenever called by direction of the Chairman of the Board, the Vice-Chairman of the Board, or the President. Special meetings of any committee may be called by the chairman or vice chairman of such committee. The Secretary, Secretary Designee, or Assistant Secretary shall give notice to each director of the time, date, place and purpose of each special meeting of the Board of Directors, at least five (5) days prior to the meeting. Such notice may be waived by any director. Unless otherwise indicated in the notice thereof, any and all business may be transacted at any special meetings of the Board.

5.4 Notice. Notice shall be deemed given to a director or committee member when it is mailed, postage prepaid by the Secretary, Secretary Designee or Assistant Secretary to the address of such director or committee member as shown upon the books of the Corporation, or when it is personally delivered to such director or committee member or left at his or her residence or usual place of business, or when sent by telephone, electronic mail or courier, to the director or committee member. Each such notice shall state the place, day, and hour at which the meeting is to be held and, in the case of any special meeting, shall state briefly the purpose or purposes thereof. Each director or committee member who is entitled to notice under law, the Articles of Incorporation or these By-Laws, waives notice if such director or committee member is present in person at the meeting requiring such notice or if such director or committee member signs a written waiver of notice for such meeting before or after the meeting which waiver is filed with the records of the director or committee meetings, as the case may be.

5.5 Place of Meeting. The Board of Directors and each committee may hold its meetings at such place or places as it may from time to time determine. Members of the Board of Directors or a committee of the Board may participate in a meeting by means of a conference via telephone or similar communications equipment if all persons participating in the meeting can communicate with each other at the same time.

5.6 Quorum. A majority of the entire Board of Directors shall constitute a quorum for the transaction of business at all meetings of the Board of Directors. A majority of the committee members then in office, but not less than two (2) directors for committees of the Board shall constitute a quorum for the transaction of business at all meetings of committees. If at any meeting of the Board of Directors or any committee less than a quorum shall be present, a majority of those present shall adjourn the meeting and set the date, time and place for the next meeting.

5.7 Actions of Directors or Committees. The act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by law, the Articles of Incorporation or these By-Laws. The act of a majority of members of a committee present at any meeting of the committee at which there is a quorum shall be the act of the committee. Any action required or permitted to be taken at a meeting of the Board of Directors or any committee may be taken without a meeting if a unanimous written consent which sets forth the action is signed by each member of the Board or committee and is filed with the minutes of the proceedings of the Board or committee.

ARTICLE VI
OFFICERS

6.1 Election and Tenure. The officers of the Corporation shall consist of a Chairman of the Board of Directors, a Vice Chairman of the Board of Directors, the President, a Secretary, Treasurer, Assistant Secretary, and such other officers as the Board of Directors from time to time may consider necessary for the proper conduct of the business of the Corporation. Any two or more offices may be held by the same person, but no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law or by these By-Laws to be executed, acknowledged or verified by any two or more officers. Each new officer shall take office immediately upon election by the Board of Directors and shall hold office until his or her successor has been elected and has taken office or until his or her earlier resignation or removal. The officers shall be elected for a one-year term by the Board of Directors, except where a longer term is expressly provided in an employment contract duly authorized and approved by the Board of Directors. Except where otherwise expressly provided in a contract duly authorized by the Board of Directors, all officers and agents of the Corporation shall be subject to removal at any time with or without cause, by the affirmative vote of a majority of the whole Board of Directors and all officers, agents, and employees shall hold office at the discretion of the Board of Directors.

6.2 Vacancy. In the case of a vacancy in the position of any officer, through death, resignation, disqualification, removal or other cause, the Board of Directors shall elect a successor for the unexpired portion of the term. In the event that any office other than an office required by law shall not be filled by the Board of Directors, or, once filled, subsequently becomes vacant, then such office and all references thereto in these By-Laws, shall be deemed inoperative unless and until such office is filled in accordance with the provisions of these By-Laws.

6.3 Chairman of the Board. The Chairman shall preside over meetings of the members and the Board of Directors and shall do and perform such other duties as may from time to time be assigned to him by the Board of Directors.

6.4 Vice Chairman. The Vice Chairman, in the absence of the Chairman, shall preside over meetings of the Members and the Board of Directors and shall do and perform such other duties as may from time to time be assigned to him or her by the Board of Directors.

6.5 Powers and Duties of the President. The President shall be the chief executive officer and chief operating officer of the Corporation and shall have general charge and control of all its affairs and properties. The President may sign and execute all authorized bonds, contracts or other obligations in the name of the Corporation, except insofar as the Board of Directors may authorize other officers or agents of the Corporation to do so. The President shall have the general powers and duties of supervision and management usually vested in the office of the president of a corporation. The President shall not be a member of the Board of Directors. The President shall do and perform such other duties as may, from time to time, be assigned by the Board of Directors.

6.6 Secretary. The Secretary shall keep the minutes of the meetings of the Members and directors in one or more books provided for that purpose; be custodian of all records of the Corporation; maintain a membership list containing, in alphabetical order, the name, address,

telephone number, and fax number of each member which shall be furnished to the Secretary by such member. The Secretary shall also give, or cause to be given notice of all meetings of Members and directors and all other notices required by law or by these By-Laws, and in case of absence or refusal or neglect to do so, any such notice may be given by any person hereunto directed by the Chairman or the President. In general, the Secretary shall perform all the duties generally incident to the office of Secretary of a corporation, subject to the control of the Board of Directors.

6.7 Assistant Secretary. The Board of Directors may elect an Assistant Secretary or more than one Assistant Secretary. Each Assistant Secretary shall (except as otherwise provided by resolution of the Board of Directors) have power to perform all duties of the Secretary in the absence or disability of the Secretary and shall have such other powers and shall perform such other duties as may be assigned by the Board of Directors or the President. In case of the absence or disability of the Secretary, the duties of the office shall be performed by the Assistant Secretary and the taking of any action by any such Assistant Secretary in place of the Secretary shall be conclusive evidence of the absence or disability of the Secretary.

6.8 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements and books belonging to the corporation, to deposit all monies and other valuable effects in the name and to the credit of the Corporation such deposits as may be designated by the Board. The Treasurer shall disburse the funds of the Corporation as may be ordered by the President or the Board, taking proper vouchers for such disbursements and shall render to the President of the Board when the President of the Board shall require it, an accounting of all his or her transactions as Treasurer and of the financial condition of the Corporation.

ARTICLE VII
BANK ACCOUNTS AND LOANS

7.1 Bank Accounts. Such officers or agents of the Corporation as from time to time shall be designated by the Board of Directors shall have authority to deposit any funds of the Corporation in such banking institutions as shall from time to time be designated by the Board of Directors, and such officers or agents as from time to time shall be authorized by the Board of Directors, may withdraw any or all of the funds of the Corporation so deposited in any such banking institution, upon checks, drafts or other instruments or orders for the payment of money, drawn against the account or in the name or behalf of the Corporation, and made or signed by such officers or agents; and each banking institution with which funds of the Corporation are so deposited is authorized to accept, honor, cash and pay, without limit as to amount, all checks, drafts or other instruments or orders for the payment of money, when drawn, made or signed by officers or agents so designated by the Board of Directors until written notice of the revocation of the authority of such officer or agents by the Board of Directors shall have been received by such banking institutions in which funds of the Corporation are deposited, the signatures of the officers or agents of the Corporation so authorized to draw against the same. In the event that the Board of Directors shall fail to designate the persons by whom checks, drafts and other instruments or orders for the payment of money shall be signed, as provided above in this Article, all such checks, drafts and other instruments or orders for the payment of money shall be signed by the Chairman, Vice Chairman or President and countersigned by the Secretary/Treasurer or Assistant Secretary.

7.2 Loans. Such officers or agents of this Corporation as from time to time shall be designated by the Board of Directors shall have authority to effect loans, advances or other forms of credit at any time or times for the Corporation from such banks, trust companies, institutions, corporations, firms or persons as the Board of Directors shall from time to time designate, and as security for the repayment of such loans, advances, or other forms of credit to assign, transfer, endorse and deliver, either originally or in addition or substitution, any or all stocks, bonds, rights and interest of any kind in or to stocks or bonds, certificates of such rights or interest, deposits, accounts, documents covering merchandise, bills and accounts receivable and other commercial paper and evidences of debt at any time held by the Corporation; and for such loans, advances or other forms of credit to make, execute and deliver one or more notes, acceptances or written obligations of the Corporation on such terms, and with such provisions as to the security or sale or disposition thereof as such officers or agents shall deem proper; and also to sell to, or discount or rediscount with, such banks, trust companies, institutions, corporations, firm or persons, any and all commercial paper, bills receivable, acceptance and other instruments and evidences of debt at any time held by the Corporation, and to that end to endorse, transfer and deliver the same. There shall from time to time be certified to each bank, trust company, institution, corporation, firm or person so designated the signatures of the officers or agents so authorized; and each such bank, trust company, institution, corporation, firm or person is authorized to rely upon such certification until written notice of the revocation by the Board of Directors of the authority of such officers or agents shall be delivered to such bank, trust company, institution, corporation, firm or person.

ARTICLE VIII
FISCAL YEAR

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

ARTICLE IX
IDEMNIFICATION OF DIRECTORS AND OFFICERS

9.1 Third Party Proceedings. The Corporation shall indemnify any person who was or is a party to any proceeding (other than an action by, or in the right of, the Corporation), by reason of the fact that he 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 liability incurred in connection with such proceeding, including any appeal thereof, if he or she acted in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any proceeding by judgment, order, settlement, or 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 or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

9.2 Derivative Proceedings. The Corporation shall indemnify any person who was or is a party to any proceeding 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, officer, employee, or agent of the Corporation or is or was serving at the request of the Corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses and amounts paid in settlement not exceeding, in the judgment of the Board of Directors, the estimated expense of litigating the proceeding to conclusion, actually and reasonable incurred in connection with the defense or settlement of such proceeding, including any appeal thereof. Such indemnification shall be authorized if such person acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Corporation, except that no indemnification shall be made under this section 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 in which proceeding was brought, or any other court of competent jurisdiction, shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonable entitled to indemnity for such expenses which such court shall deem proper.

9.3 Expenses. To the extent that a director, officer, employee, or agent of the Corporation has been successful on the merits or otherwise in defense of any proceeding referred to in Section 9.1 or Section 9.2, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses actually and reasonable incurred by him or her in connection therewith.

9.4 Standard of Conduct. Any indemnification under Section 1 or Section 2, unless pursuant to a determination 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 Section 9.1 or Section 9.2. Such determination shall be made:

(a) By the Board of Directors by a majority vote of a quorum consisting of directors who were not parties to such proceeding;

(b) If such a quorum is not obtainable or, even if obtainable, by majority vote of a committee duly designated by the Board of Directors (in which directors who are parties may participate) consisting solely of two or more directors not at the time parties to the proceeding;

(c) By independent legal counsel selected by the Board of Directors as prescribed in paragraph (a) or if the committee cannot be designated under paragraph (b), selected by a majority vote of the full Board of Directors (in which directors who are parties may participate); or

(d) By the voting Members by a majority vote of a quorum consisting of Members who were not parties to such proceeding or, if no such quorum is obtainable, by a majority vote of Members who were not parties to such proceeding.

9.5 Reasonableness of Expenses. Evaluation of the reasonableness of expenses and authorization of indemnification shall be made in the same manner as the determination that indemnification is permissible. However, if the determination of permissibility is made by independent legal counsel, persons specified by paragraph (c) of Section 9.4 shall evaluate the reasonableness of expenses and may authorize indemnification.

9.6 Advances for Expenses. Expenses incurred by an officer or director in defending a civil or criminal proceeding may be paid by the Corporation in advance of the final disposition of such proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if he/she is ultimately found not to be entitled to indemnification by the Corporation pursuant to this Article VIII. Expenses incurred by other employees and agents may be paid in advance upon such terms of conditions that the Board of Directors deems appropriate.

9.7 Nonexclusivity of Indemnification Provisions. The indemnification and advancement of expenses provided pursuant to this Article are not exclusive and the Corporation may make any other or further indemnification or advancement of expenses of any of its directors, officers, employees, or agents, under any by-law, agreement, vote of Members or disinterested directors, or otherwise, both as to action in his/her official capacity and as to action in another capacity while holding such office. However, indemnification or advancement of expenses shall not be made to or on behalf of any director, officer, employee, or agent if a judgment or other final adjudication establishes that his/her actions or omissions to act were material to the cause of action so adjudicated and constitute:

(a) A violation of the criminal law, unless the director, officer, employee or agent had reasonable cause to believe his/her conduct was lawful or had no reasonable cause to believe his/her conduct was unlawful;

(b) A transaction from which the director, officer, employee, or agent derived an improper personal benefit;

(c) In the case of a director, a circumstance under which the liability provisions of Section 607.144 of the Florida Business Corporation Act are applicable; or

(d) Willful misconduct or a conscious disregard for the best interest of the Corporation in a proceeding by or in the right of the Corporation to procure a judgment in its favor or in a proceeding by or in the right of a Member.

9.8 Applicability to Former Officers, Etc. Indemnification and advancement of expenses as provided in this Article shall continue as, unless otherwise provided when authorized or ratified, 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, unless otherwise provided when authorized or ratified.

9.9 Court Ordered Indemnification. Unless the Corporation's Articles of Incorporation provide otherwise, notwithstanding the failure of the Corporation to provide indemnification, and despite any contrary determination of the Board or of the Members in the specific case, a director, officer, employee, or agent of the Corporation who is or was a party to a proceeding may apply for indemnification or advancement of expenses, or both, to the court conducting the proceeding, to the circuit court, or to another court of competent jurisdiction. On receipt of an application, the court, after giving any notice that it considers necessary, may order indemnification and advancement of expenses, including expenses incurred in seeking court-ordered indemnification or advancement of expenses, if it determines that:

(a) The director, officer, employee, or agent is entitled to mandatory indemnification under Section 9.3; in which case the court shall also order the Corporation to pay the director reasonable expenses incurred in obtaining court-ordered indemnification or advancement of expenses;

(b) The director, officer, employee, or agent is entitled to indemnification or advancement of expenses, or both, by virtue of the exercise by the Corporation of its power pursuant to Section 7; or

(c) The director, officer, employee, or agent is fairly and reasonably entitled to indemnification or advancement of expenses, or both, in view of all the relevant circumstances, regardless of whether such person met the standard of conduct set forth in Section 9.1, Section 9.2, or Section 9.7.

9.10 Merger, Etc. For purposes of the Article, the term "Corporation" includes, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, officer, employee, or agent of constituent corporation, or is or was serving at the request of a constituent corporation as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, is in the same position under this Article with respect to the resulting or surviving corporation as he/she would have with respect to such constituent corporation if its separate existence had continued.

9.11 Definitions. For purposes of the Article:

- (a) The term "other enterprises" includes employee benefit plans;
- (b) The term "expenses" includes counsel fees, including those for appeal;
- (c) The term "liability" includes obligations to pay a judgment, settlement, penalty, fine (including an excise tax assessed with respect to any employee benefit plan), and expenses, actually and reasonably incurred with respect to a proceeding;

(d) The term “proceeding” includes any threatened, pending, or contemplated action, suit, or other type of proceeding whether civil, criminal, administrative, or investigative and whether formal or informal;

(e) The term “agent” includes a volunteer;

(f) The term “serving at the request of the Corporation” includes any service as a director, officer, employee, or agent of the Corporation that imposes duties on such persons, including duties relating to an employee benefit plan and its participants or beneficiaries; and

(g) The term “not opposed to the best interest of the Corporation” describes the actions of a person who acts in good faith and in a manner he or she reasonably believes to be in the best interest of the participants and beneficiaries of any employee benefit plan.

9.12 Insurance. The Corporation shall have power 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 this section.

9.13 Extension of Indemnification Provisions. To the extent that the Florida Business Corporation Act is amended after the date of these By-Laws to permit the Corporation to provide broader indemnification rights than those set forth above in this Article IX, then these By-Laws shall be deemed to automatically include any such amendments to the Florida Business Corporation Act.

ARTICLE X
AMENDMENTS

The Articles of Incorporation and the By-Laws may be amended, altered, repealed or new By-Laws adopted at any regular, special or annual meeting of the Board of Directors, or the Members of the Corporation by a majority of those present, provided a quorum is present.